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UNDERGROUND CONDUITS FOR ELECTRICAL OR OTHER PURPOSES AS CONSTITUTING ADDITIONAL SERVITUDES UPON A STREET OR HIGHWAY.

The question propounded as the subject of this editorial was suggested by one of our esteemed correspondents as a question of recent and lively interest. An exhaustive examination of the authorities has convinced us that the question is indeed assuming great importance and is certainly of very modern origin.

The general question of what constitutes an additional servitude upon a street or highway is very much unsettled. The general rule is that "the appropriation of land for the use of a highway is for a specific purpose, and the public thereby acquires a mere right of passage with the powers and privileges which are incident to such a right." Bloomfield v. Calkins, 62 N. Y. 386. While the rule is thus correctly stated it is of little use in solving the question of what constitutes an additional servitude for which compensation must be made. It merely reduces the question to another,—What are the "incidental powers and privileges which are incident to the public's right of passage? On this question there is no principle on which the authorities can be reconciled. Thus, for instance, one line of authorities hold that the placing of telegraph and telephone poles and wires on the street is not an additional servitude, being an incident of the right of passage and communication upon the highway. Pierce v. Drew, 136 Mass. 75; Cater v. Tel. Co., 60 Minn. 539, 40 Cent. L. J. 475; Julia Bldg. Assn. v. Tel. Co., 88 Mo. 258; People v. Eaton, 100 Mich. 208, 59 N. W. Rep. 145; Magee v. Overshimer, 150 Ind. 127, 49 N. E. Rep. 951. Other courts, on the other hand, hold such a use of the highway to be absolutely foreign to the public's right of passage and therefore an additional servitude. Board of Trade Tel. Co. v. Barnett, 107 Ill. 507; Metropolitan, etc. Co. v. Lead Co., 67 How. Pr. 365; Nicoll v. Tel. Co., 62 N. J. L. 733, 42 Atl. Rep. 583; American Tel. Co. v. Smith, 71 Md. 535; Postal Tel. Co. v. Eaton, 170 Ill. 513, 49 N. E. Rep. 365; Stowers v. Tel. Co., 68 Miss. 550, 9 So. Rep. 356, 24 Am. St. Rep. 290; Pacific Cable Co. v. Irvine, 49 Rep. 113.

We shall confine the discussion of this editorial, however, to the consideration of those cases which discuss the question of underground conduits as additional servitudes upon a street or highway. In the first place, it must be carefully borne in mind that there is a distinction to be observed in this regard between the streets of a city and suburban highways. To the latter the ancient rule of the common law is still applicable, that "the owner of the soil of a highway has a right to all above and under ground, except only the right of passage for the king and his people." In the cities a more complex state or civilization demands a greater sacrifice of individual and property rights, and therefore the easement of the public is more comprehensive in city streets than in country highways. Thus, it has been held that the laying of gas pipes along a country road is an additional servitude. Kincaid v. Gas Co., 124 Ind. 577, 24 N. E. Rep. 1066; Bloomfield v. Calkin, 62 N. Y. 386; Sterling's Appeal, 111 Pa. St. 35; Consumers' Gas Co. v. Hutsinger, 12 Ind. App. 285; Huffman v. State, 21 Ind. App. 449. But not the laying of sewer pipes. Cabot v. Kingman, 166 Mass. 403, 44 N. E. Rep. 344. In a city, however, abutting owners on a street have title in the street subject to all the usual urban servitudes of sub-surface pipes and subways. Of these sub-surface servitudes the three universally recognized, at this day, are water, sewer and gas pipes. The laying of conduits for such purposes do not constitute an additional servitude upon a city street for which compensation must be made to the abutting owner. Carpenter v. Capital Co., 178 Ill. 29, 52 N. E. Rep. 973; Bishop v. North Adams, 167 Mass. 364, 45 N. E. Rep. 925; Warren v. Grand Haven, 30 Mich. 24. The principle on which these cases rest is that the laying of pipes for such purposes is such a usual one and one so necessary to the proper enjoyment of the street that one dedicating a street to the public will be presumed to have such uses in contemplation when he dedicated.

But the most earnest inquiry which has come to us is whether the same principles applicable to sub-surface conduits for purposes of sewerage, or for supplying water and

light to the inhabitants of the city, can be applied to the laying of sub-surface conduits for carrying telegraph or telephone wires, or for cold storage purposes, or for running electric railroads, or for mail chutes, or for any other *quasi* public purpose which the brain of man might invent. That this phase of the question is one not altogether free from difficulty is quite evident. It is one also upon which the authorities, up to the present time, are not numerous. The most recent and valuable authority, on this particular point, is the case of Coburn v. New Telephone Co., 156 Ind. 90, 59 N. E. Rep. 324. In this case it was held that the construction of a trench in a sidewalk three feet from abutter's property line as a conduit for telephone cables and wires to be used by the public as a means of communication was not a use of the street inconsistent with the dedication thereof to the public use. The argument of the court rested first on the fact that telephone and telegraph communication was a use for which a highway could be legitimately used, and finding direct encouragement from that line of authorities which hold that the erection of poles and wires for such purposes does not impose an additional servitude upon the street, proceeds to reason very logically as follows: "If the setting of poles and the stringing thereon of telephone wires overhead, in a street, which at best is some obstruction to travel and to the manipulation of apparatus for the extinguishing of fires, is a legitimate exercise of the public easement, there is a stronger reason for asserting that the laying of cables and wires under the surface for a like purpose with municipal authority, is a proper use of the street, and for which, if skillfully performed, the fee owner has no ground for complaint." Another very recent decision supports the conclusion reached by the Indiana court. Castle v. Bell Telephone Co. of Buffalo, 63 N. Y. S. 482. In this case the general rule is stated very broadly that the right of the abutting owner even though his fee extends to the center of the street, is subject to the paramount right of the public to use such street for any purpose which the enjoyment, comfort, and convenience of the locality may require."

These authorities would seem to settle the question so far as telephone conduits are concerned, were it not for, at least, one element of uncertainty. The Indiana decision, for instance, rests entirely on the reasoning and authority of that class of cases holding that the erection of poles and wires for telegraph or telephone purposes are not an additional servitude upon the street or highway. We cannot doubt that wherever the decisions of a state so hold, the laying of the wires underground for the same purposes could not, with any reason, be held to be an additional servitude. But in New York the question of whether the erection of telephone or telegraph poles in a *city street* is an additional servitude has never been decided, the decisions of that state having gone no further than holding them to be an additional servitude if placed upon a country road. In that state, however, it is held that the placing of steam, electric or elevated railroads on a city street is an additional servitude, and reasoning from these cases, McLaughlin, J., dissents in the New York case as follows: "Telephone companies are private corporations organized and conducted for the individual profit of the stockholders. Strictly speaking, the telephone is not a public necessity or convenience. It accommodates and serves the public to no greater extent than street, steam and elevated railroads, and to these, regardless of whether they obstruct light, air and access, it is well settled that their construction is an additional burden upon the owner of the fee. Placing conduits in this avenue for telephone wires is not a proper municipal or street use, as against the owner of the fee."

We believe that an element of great importance has been overlooked in this class of cases either inadvertently or on the ground of expediency, *i. e.* that the real question in all these cases is not whether the use to which the conduit or other street improvement is to be put is a public one justifying the exercise of the power of eminent domain, but whether such a use was contemplated by the abutting owner when the street was condemned or dedicated. It should be carefully remembered that while the city has the right to grant the use of the street for any purpose that may serve the public convenience they should not have the right to permit the construction of new and unusual improvements which could not have been in the contemplation of the parties at the time of the dedication, without compensation to the abutting

owners. In most cases the construction of such improved "devices" either of transportation or communication are to the financial interests of private individuals. That these should be compelled to pay for the advantages which they thus enjoy, at least to the extent to which they detract from the value of the fee of the abutting owner would seem to be a proposition too self-evident for controversy. Such a rule would not retard improvements but would merely recompense the owner of the fee for the appropriation of his land by a private individual or corporation for private gain. The fact that there is a public use subserved by the new improvement should only go to the extent of permitting the exercise of the right of eminent domain; it certainly is not sufficient to justify the appropriation of another's land for private gain without some compensation.

This reasoning is particularly applicable to the construction of underground conduits; especially those for carrying telephone or telegraph wires, or for cold storage or other commercial purposes. No abutting owner ever contemplated or received compensation for such an appropriation of his fee at the time the land was dedicated to the public. Moreover, underground conduits may injure the fee to an extent greater than mere surface improvements. The writer has in mind, now, an instance in the city of St. Louis which, though it never reached the courts, affords an excellent illustration of the injury to the fee sometimes occasioned by sub-surface conduits. Quite a distance under the surface of a certain street in that city runs a tunnel for the passage of steam railroads. This tunnel at a certain point ran close to the sidewalk. At this point the owner of certain property having decided to erect a tall office building for which a deep foundation was of course necessary, was prevented from securing the proper foundation by the peculiar construction of this tunnel, and therefore compelled to reduce the height of his building to three stories. Other illustrations will quite readily suggest themselves to the careful student of this question of the actual financial loss and deprivation of property to which the owner of abutting property will sometimes be subjected by the construction of underground conduits. While the public need for such conduits may be imperative, that, indeed, is certainly not a sufficent reason for taking away the rights and property of the abutting owner without some reasonable compensation.

NOTES OF IMPORTANT DECISIONS

EASEMENTS—ACQUISITION OF EASEMENTS OF SUPPORT WHERE GRANTOR DOES NOT EXPRESSLY RESERVE THEM.—An important decision with reference to the acquisition of easements of support has been given by the court of appeal (Romer and Stirling, L. JJ., Vaughan Williams, L.J., dissenting) in Union Lighterage Co. v. London Graving Dock Co. (*Times*, 22d inst.). At a time when certain riverside premises were in the same ownership, a graving dock was constructed on the eastern part, and the dock was supported by rods or ties which were carried for some fifteen feet under the surface of the western part, which was a wharf, and there fastened to piles. This was done about 1861. In 1877 the owners conveyed the wharf portion to the plaintiffs, who have since carried on business there. The conveyance reserved no right of support for the dock, which was at first retained by the owners. In 1886 it was sold, and subsequently acquired by the defendants. Until 1900, when excavations were made, the officials of the plaintiff company were not aware of the existence of the rods, and they have claimed that the dock is not entitled to any right of support from the wharf. The defendants, on the other hand, have claimed a right of support either by implied reservation upon the grant of the wharf in 1877, or by virtue of an easement acquired by prescriptive enjoyment. Both of these grounds of claim, however, were attended with considerable difficulty. It is well settled that if a grantor of land wishes to reserve an easement in his own favor he must do so expressly. A grantee may take without express grant *quasi* easements which have been enjoyed with the property granted, but to allow a corresponding privilege to the grantor would be an infringement of the rule that a man shall not derogate from his own grant. There is an exception, however, in the case of easements of necessity; and, moreover, where there are reciprocal easements enjoyed for the benefit of both parts of the land, these continue after the grant. Wheldon v. Burrows (12 Ch. D. 31). In the present case the easement claimed was not reciprocal, nor, in the opinion of the court, was it an easement of necessity. The rods, indeed, were as Stirling, L. J., pointed out, essential to the enjoyment of the dock in its existing condition, but this was a matter of convenience only, not of necessity. The dock, by alteration, was capable of use without them. Hence no reservation of the easement could be implied under the conveyance of 1877. And the claim to the acquisition of an easement of support by prescription was subject to the objection that the enjoyment had not been open. How far the enjoyment of an easement must be known to the owner of the land against which it is claimed, was the subject of

much discussion in Dalton v. Angus (6 App. Cas. 740). In the present case Romer, L. J., stated the principle to be that a prescriptive right to an easement over a man's land can only be acquired where the enjoyment has been open—that is to say, of such a character that an ordinary owner of the land, diligent in the protection of his interests, would have, or must be taken to have, a reasonable opportunity of becoming aware of that enjoyment." The plaintiffs had had no such opportuuity of becoming aware of the existence of the underground rods, and hence against them the right of support had not been acquired.—*Solicitor's Journal.*

MASTER AND SERVANT—ASSUMPTION OF RISK BY MINORS.—While it is certain that a higher degree of care is required of the master toward servants of tender years, yet it is not equally as certain what risks of the employment are assumed by such servants, in order to exempt the master from liability for their injury. The tendency of some authorities is to make no distinction in this regard between servants over or under age. Among these is the recent case of Hesse v. National Casket Co., 52 Atl. Rep. 384, in which the Court of Errors and Appeals of New Jersey held that an employee, although a minor, in accepting service assumes the risk of such dangers connected with his employment as are obvious to him, and cannot hold his employer responsible for injuries resulting therefrom, notwithstanding the latter has failed to point out such dangers to him. In this case, plaintiff, a boy of 16 years, was working in front of a saw set in an iron frame. The bench on which he was sitting tipped over and threw him upon the saw. In rendering its opinion the court said: "If the accident resulted from the plaintiff's having of his own volition moved too near the end of the bench, the master is relieved from responsibility. The fact that the bench would tip over if a person standing upon it should move beyond its center of gravity, was perfectly obvious, and the plaintiff, although a minor, was chargeable with notice of that fact. He was old enough to fully appreciate the danger of having the bench tip, and the likelihood of its tipping if he stood too near to one or the other of its ends, and consequently took these risks upon himself, to the same extent as a person of more mature age." In this case four judges dissented.

The authorities on this question are not altogether unanimous. It has been held as a general rule that where a minor is of sufficient age and discretion to comprehend the dangers of an employment, the fact that he is a minor cannot exercise a controlling influence. Evansville R. R. v. Henderson, 134 Ind. 636, 33 N. E. Rep. 1021; Chicago, B. & Q. R. R. v. Eggman, 59 Ill. App. 680; Goff's Admr. v. R. R., 36 Fed. Rep. 299; De Graff v. Railroad, 76 N. Y. 135; Pennsylvania Co. v. Congdon, 134 Ind. 226, 33 N. E. Rep. 195, 39 Am. St. Rep. 251; Tillotson v. R. R., 44 La. Ann. 95, 10 South. Rep. 400; Michael v. Stanley, 75 Md. 464, 23 Atl. Rep. 1094; McGinnis v. Bridge Co., 49 Mich. 466; Casey v. Railroad, 90 Wis. 113, 62 N. W. Rep. 624; Williams v. Churchill, 137 Mass. 243; Williamson v. Marble Co., 66 Vt. 427, 29 Atl. Rep. 669. A later case in New York, however, holds that in employing a person of mature years to work upon dangerous machinery, it is the duty of the master to see that such person fully appreciates its dangerous character and the consequences of a want of care, and if the employee is too young to realize after full instruction, the danger of the work, and the necessity of exercising care, the employer puts or keeps him at such work at his own risk. Hickey v. Taafe, 105 N. Y. 26, 12 N. E. Rep. 286. This rule is supported by many respectable authorities. Texas & Pac. R. R. v. Brick, 83 Tex. 598, 20 S. W. Rep. 511; Turner v. Railroad, 22 S. E. Rep. 83; De Lozier v. Lumber Co. (Ky. 1892), 18 S. W. Rep. 451; Carter v. Cotter, 88 Ga. 286, 14 S. E. Rep. 476; Gains v. Railroad. 47 Mo. App. 173; Thompson v. Johnston, 86 Wis. 576, 57 N. W. Rep. 298; Brazil Coal Co. v. Gaffney, 119 Ind. 455, 21 N. E. Rep. 1102, 12 Am. St. Rep. 422, 4 L. R. A. 850; Chicago, etc. R. R. v. Bayfield, 37 Mich. 205; Dowling v. Allen, 102 Mo. 213, 14 S. W. Rep. 751; Krauz v. R. R., 123 N. Y. 1, 25 N. E. Rep. 206, 20 Am. St. Rep. 716; Dillingham v. Harden, 6 Tex. Civ. App. 474, 26 S. W. Rep. 914. And this same rule applies where the master orders a minor servant to oil dangerous machinery of which he had no knowledge. Hinckley v. Horazdowsky, 113 Ill. 309, 24 N. E. Rep. 421, 23 Am. St. Rep. 618, 8 L. R. A. 490. And, also, where a master orders a boy to do something which was not in the line of business in which his father consented he could be employed. Weaver v. Iselin, 161 Pa. St. 386, 29 Atl. Rep. 49.

It is apparent that the two rules stated above can exist together and do not necessarily conflict; but a glance at the cases supporting each proposition will show how shadowy, sometimes, is the line of demarcation that separates them. Sometimes a nonsuit will be ordered by the court under the first rule where, apparently, the same facts have led another court to permit a recovery under the second rule. We believe, however, that the interposition of the court's opinion on the question is in no case justifiable. The whole question should be left to the jury. That this sentiment is gaining ground is evidenced by the latest authorities. Northern Pacific Coal Co. v. Richmond, 58 Fed. Rep. 756; St. Louis, etc. R. R. v. Higgins, 53 Ark. 458, 14 S. W. Rep. 653; Hayden v. Mfg. Co., 29 Conn. 548; Emma Cotton Seed Oil. Co. v. Hale, 56 Ark. 232, 19 S. W. Rep. 600. Some authorities hold, however, that when the facts are undisputed, the fact that plaintiff is a minor does not require that the question of his assumption of risk should be submitted to the jury. Harold v. Pfister, 92 Wis. 417, 66 N. W. Rep. 355; Rummell v. Dillworth, 111 Pa. St. 343. In a federal case, however, it was held that notwithstanding it was

undisputed and clear that plaintiff, a minor, had knowledge of the *existence* of the danger, the jury might properly consider and decide whether plaintiff had reached such maturity as to *understand* the danger to which he was exposed by its presence. Northern Pacific Coal Co. v. Richmond, 58 Fed. Rep. 756. This case, we believe to announce a principle more consistent with reason and justice that those authorities which announce a different rule.

CONTRACTS OF COMPROMISE AND ARBITRATION OF CLAIMS BY AND AGAINST MUNICIPAL AND OTHER PUBLIC CORPORATIONS.

1. *Power to Compromise Claims.*
2. *Who Authorized to Compromise.*
3. *Method of Compromise.*
4. *Arbitration of Claims.*
5. *Questions of Damages and Benefits may not be Arbitrated.*
6. *Mode of Submission to Arbitration.*

1. *Power to Compromise Claims.* — The rule of law is well established that, unless expressly forbidden by charter or general law applicable, the municipal and other public corporation has power to settle disputed claims in its favor or against it.[1] The capacity to sue and be sued gives the implied power to settle disputed claims, controversies and matters in litigation. The proper corporate authorities may compromise doubtful controversies to which the corporation is a party, either as plaintiff or defendant. The law invests them with discretion in such adjustments which they are to exercise for the best interests of the corporation. Therefore, a settlement of an existing controversy, if made in good faith, binds the corporation; but if collusively made it is not obligatory. However, a mere error of judgment will not vitiate the settlement.[2] It has been held that a county may compromise pending litigation, involving title to swamp lands.[3]

Notwithstanding the right of settlement follows logically from the right to maintain and defend suits, the corporation has no right to discharge a debt without payment which may be held against persons who are solvent and responsible where no controversy exists respecting the validity and binding effect of the indebtedness.[4] So, where the amount of the claim, secured by bond, is undisputed and no well-founded apprehension exists as to the legal liability of the bondsmen, a township has no legal authority to release the principal or his sureties from his or their legal obligation to pay the full sum by taking notes of the principal and sureties; and such transactions will not bar an action on the bond.[5]

2. *Who Authorized to Compromise.*—To be legal and binding the compromise must be made by the duly authorized corporate officers. In municipal corporations proper where the representative form of government prevails, and the corporators or inhabitants choose officers to represent and act for them in all matters which concern the interests of the corporation, the power of compromise usually exists in the mayor and the governing legislative body, generally demoninated the common council.[6] The Supreme Court of the United States sustained, as authorized by the laws of Louisiana, in the absence of fraud, a compromise made between the city authorities of New Orleans and a railroad company respecting a disputed grant of a user of a part of the city property for railroad purposes.[7] In towns where the officers are not invested with the full corporate capacity of the inhabitants a legal compromise may be affected only at a town meeting by a vote of the majority of the electors. It is competent for a town, in its corporate capacity, by a vote of the majority, to release a debt, as well as to contract one.[8] It has been held in Wisconsin that the electors at a town meeting may vote to allow a certain sum in settlement of a claim for the support of a pauper, although no previous notice has been given that such claim be presented or acted upon.[9] In Mas-

[1] People *ex rel* v. San Francisco, 27 Cal. 655; People *ex rel* v. Coon, 25 Cal. 635; Augusta v. Leadbetter, 16 Me. 45, 47; Baileyville v. Lowell, 20 Me. 178; Bean v. Jay, 23 Me. 117; Pront v. Pittsfield Fire District, 154 Mass. 450.

[2] Per Treat, C. J., in Petersburg v. Mappin, 14 Ill 193, 195; 56 Am. Dec. 501, approved in Agnew v. Brall, 124 Ill. 312, 315, 20 Am. & Eng. Corp. Cas. 124. As to power to release the party to a contract which appears oppressive, see, Bean v. Jay, 23 Me. 117; Meech v. Buffalo, 29 N. Y. 210.

[3] Mills County v. B. & M. R. R. Co., 47 Iowa, 66; Grimes v. Hamilton County, 37 Iowa, 290; Allen v. Cerro Gordo County, 34 Iowa, 54.

[4] Per Craig, J., in Agnew v. Brall, 124 Ill. 312, 315; 20 Am. & Eng. Corp. Cas. 124.

[5] Township of Otsego Lake v. Kirtsen, 72 Mich. 1; 24 Am. & Eng. Corp. Cas. 456.

[6] State *ex rel* v. Martin, 27 Neb. 441, 43 N. W. Rep. 244.

[7] New Orleans v. L. & N. R. R. Co., 109 U. S. 221, 2 Am. & Eng. Corp. Cas. 156.

[8] Ford v. Clough, 8 Me. 334, 345, 23 Am. Dec. 513; Nelson v. Milford, 7 Pick. (Mass.), 68.

[9] Tuttle v. Weston, 59 Wis. 151, 2 Am. & Eng. Corp. Cas. 169.

sachusetts it has been held that while a town may not legally vote to pay one a sum of money who was injured while employed by the town because of his needy circumstances, the town may settle such disputed claim.[10]

In counties and other civil subdivisions, possessing political and corporate life, the power of compromise usually exists in the representative boards, variously designated as courts, commissioners, supervisors and boards. Thus where county supervisors have express statutory authority "to represent their respective counties, and to have the care and management of the property and business of the county in all cases where no other provision shall be made," they may compromise a judgment rendered in favor of the county.[11]

So where the statute confers upon the county board the care and management of the county property and power to settle all accounts, demands and causes of action against the county, such board has power to compromise its claim against a newly organized county for its proportion of indebtedness, and may, as a part of such compromise, stipulate that tax certificates on lands of the newly organized county which were required by the organic law to be assigned to it shall remain the property of the original county.[12]

3. *Method of Compromise.*—The principle is usually recognized that, a municipal corporation in protecting its property, in collecting its debts, and generally in transacting business of a private character, may, when not expressly forbidden or when not otherwise provided by charter or statute applicable, avail itself of all the rights and remedies afforded to a private corporation or individual.[13] Thus, the corporation may, under its charter powers, "to take, purchase, hold and convey real and personal property, as its purposes may require," and, its power to sue and be sued, take, hold and enforce notes given as security for a defalcation of its treasurer.[14] So it has been held that a municipal corporation may accept a note in settlement of a fine imposed for a violation of an ordinance. "Being a civil suit, simply for the recovery of money, the municipality, when acting in good faith, may settle or compromise its claim in any way it sees proper. Such a transaction can in no sense be considered as a general dealing in negotiable paper, but is simply taking, perhaps, the only feasible method to collect a debt due it."[15]

4. *Arbitration of Claims.*—Where there is a capacity to contract with a liability to pay there is generally the power of arbitration.[16] Therefore, the general rule may be stated to be that, in the absence of special restrictions in the charter or legislative act applicable, a municipal corporation possessing power to contract, to sue and be sued, has authority to settle disputed claims by arbitration to the same extent as the individual.[17] Hence, a town possessing corporate authority to sue and be sued has consequently the power to submit controversies to arbitration.[18] So it has been held that a school district may submit to arbitration differences arising upon settlement with its treasurer.[19]

In Ohio it has been held that municipal corporations having controversies as to disputed claims are included within the word "persons" in the statute of that state providing for arbitration.[20] In Kentucky a county court may submit to arbitration matters in controversy which might be the subject of suit.[21] In an early case the Supreme Court of the United States, passing on the power of a canal company to arbitrate, concluded that, although the charter did not, in terms, confer the power to refer, yet the power to sue and be sued (which was possessed by the corpor-

[10] Matthews v. Westborough, 134 Mass. 555, 562, 2 Am. & Eng. Corp. Cas. 239.

[11] Collins v. Welch, 58 Iowa, 72, 43 Am. Rep. 111.

[12] Hall v. Baker, 74 Wis. 118, 72 Am. & Eng. Corp. Cas. 208.

[13] Buffalo v. Bettinger, 76 N. Y. 393, per Church, C. J.

[14] Buffalo v. Bettinger, 76 N. Y. 393.

[15] Caldwell v. Wright, 25 Ill. App. 74. A proceeding to collect a fine for a violation of a municipal ordinance is a civil suit. Hoyer v. Mascouth, 59 Ill. 138; Stevens v. Kansas City, 146 Mo. 460, 465; Douglas v. Kansas City, 147 Mo. 428, 436, 437; United States v. Chouteau, 102 U. S. 603; McDonald v. Herst, 95 Fed. Rep. 656.

[16] Brady v. Brooklyn, 1 Barb. (N. Y.) 584.

[17] Shawneetown v. Baker, 85 Ill. 563; Elemendorf v. Jersey City, 41 N. J. L. 135; Farwell v. Eastern Counties Ry. Co., 2 Exch. 344; *In re* Corporation of Brant, 19 Upper Can. Q. B. 450; Smith v. Philadelphia, 13 Phil. (Pa.) 177.

[18] Boston v. Brazier, 11 Mass. 447; Commonwealth v. Roxbury, 9 Gray (Mass.) 451; Buckland v. Conway, 16 Mass. 395.

[19] Walnut Dist. Township v. Rankin, 70 Iowa, 65, 67.

[20] Springfield v. Walker, 42 Ohio St. 543, 547.

[21] Remington v. Harrison County Court, 12 Bush. (Ky.) 148.

ation), included the power of reference, since this is one of the modes of prosecuting a suit to judgment. The case farther held that a power to agree with a proprietor for the purchase or use of land included the power to agree to pay a specified sum, or such sum as arbitrators might fix upon.[22] In Tennessee the rule is that the state may divest itself of its sovereignty and of its exemption from suit and by legislative enactment submit claims against it in dispute to arbitration.[23]

5. *Questions of Damages and Benefits May not be Arbitrated.*—The power of arbitration does not extend to determining questions of damages and benefits arising from the exercise of the power of eminent domain. Thus, where the charter of a city authorizes the taking of lands for public improvements, and provides a special mode of ascertaining the value of the lands taken and damages by commissioners appointed in the manner, and having the qualificatlons prescribed in the charter, that mode of ascertainment is exclusive. Hence the officers of the corporation cannot make a valid agreement that the valuation of the lands and damages shall be determined by a submission to arbitration. Under such circumstances the legal adviser of the city cannot consent to a reference.[24] So commissioners of highways, being unable to agree with the owner of land over which a highway is sought to be laid out have no authority to submit the question of damage to arbitration, and thus bind their town.[25] But it has been held in Vermont that an agent, specially appointed by vote of the town to compromise a claim against the town for damages, occasioned by the laying out of a highway, has authority to submit the claim to arbitration and the town will be bound by the award.[26]

An agreement by which a city undertakes with the owners of land taken for a street to submit the assessment of damages and betterments to arbitration is *ultra vires* and void; and the city cannot maintain an action to enforce an award made under such submission. In Massachusetts, under the statute relating to the betterment law where a way is laid out, it is the duty of the board of street commissioners or of aldermen in cities, and of selectmen in towns, to determine what real estate has received special benefit from the laying out, and to assess upon such estate a proportional share of the expense. This assessment is in the nature of a tax, which must be laid proportionally upon all the estates which are specially benefitted. In laying it the boards act, not as agents of the city or town, but as public officers in a *quasi* judicial character. They are not subject to the direction or control of the city or town. The city or town cannot by any agreement abridge or limit the right of the board, or exonerate an owner of benefitted land from the liability to be assessed.[27] In an early Alabama case, the charter provided that when private property was taken for streets the damages to the owners thereof should be assessed by a jury. A jury was duly selected and assessed damages. The council disregarded the sums found by the jury, and, by resolution, fixed a larger amount as damages. Such action was sustained.[28] So a municipal corporation has no power by agreement with a railroad company to submit to arbitration claims for damages due property owners to their lands, resulting from the establishment of the road.[29]

[22] Alexander Canal Co. v. Swann, 5 How. (U. S.) 83.

[23] State v. Ward, 9 Heisk (Tenn.) 100. The corporation may be compelled to pay the awards of a statutory referee for work on public improvement by action on the award and not by *mandamus*. Elemendorf v. Jersey City, 41 N. J. L. 135.

[24] Parnet v. Bayonne, 39 N. J. L. 559.

[25] Mann v. Richard, 66 Ill. 481.

[26] Schoff v. Bloomfield, 8 Vt. 372. County commissioners in Nebraska, have no power to submit to arbitration the question of the price of a bridge, and damages for right of way across lands, for a public road. McCann v. Otoe County, 9 Neb. 324; Soiux City, & P., R. R. Co. v. Washington County, 3 Neb. 42; Stewart v. Otoe County, 2 Neb. 177.

[27] Somerville v. Dickerman, 127 Mass. 272, 275; Brimmer v. Boston, 102 Mass. 19; Harvard College v. Boston, 104 Mass, 470; Boylston Market Assn. v. Boston, 113 Mass. 528.

[28] Mobile v. Richardson, 1 Stewart & P. (Ala.) 12.

[29] A railroad company desiring to make an alteration in the location of its track that would involve the closing of parts of certain streets of the city and serious injury to property on such streets, made a written contract with the city that, in consideration of no opposition being made by the city to the change of location by the railroad commissioners, it would refer all claims for damages to arbitrations to be appointed by a judge of the superior court and would within thirty days pay the sums awarded. The contract was made at the request and for the protection of property owners. The change of location was not opposed, and was approved by the railroad commissioners and damages were awarded by the arbitrators. The railroad company not paying the awards, the city brought an action on the contract. Held (1) that while the city could have entered into such contract for its own benefit so far as any damage to the municipality itself was concerned, it had no power to do it for the benefit

6. *Mode of Submission to Arbitration.* — Ordinarily the form of submission to arbitration is immaterial, as in law, the intention is controlling. In municipal corporations proper submission may be made by the duly authorized corporate authorities. This is usually done by ordinance or resolution. The submission need not be under corporate seal.[30] It it has been held that the city council may, by resolution, authorize the mayor to submit a controversy in relation to constructing a ditch across lands to arbitration.[31] So a council may empower the city attorney to choose the arbitrators.[32]

Usually in New England towns, and other municipal governments where the inhabitants act in their individual capacities, the submission must be by a vote of the town. Thus a vote of a town empowering the selectmen to settle a claim against it "at their discretion," authorizes the selectmen to submit the claim to arbitration.[33] So an agent specially appointed by a vote of the town, to compromise a claim against the town for damages occassioned by the laying out of a highway has authority to submit the claim to arbitration and the town will be bound by the award.[34]

In Vermont selectmen of a town may submit to arbitration any claim against the town which, under the statute, they are authorized to audit and adjust; and the town will be bound by an award made in pursuance of such submission.[35] However, the selectmen are not empowered, *virtute officii*, to submit to arbitrament a question regarding the settlement of a pauper which involves the right or liability of the town.[36] Where an attorney representing a town in an action to recover damages occasioned by obstructions of a highway of such town,—which action had been sent to a referee by order of court,—signed an agreement that the report of the referee should be final, it was held that the town was thereby bound.[37]

EUGENE MCQUILLIN.

St. Louis, Mo.

of private parties. (2) That the city had no power to act as trustee for such private parties. New Haven v. N. H. & D. R. R., 62 Conn. 252, 25 Atl. Rep. 316.

[30] Brady v. Brooklyn, 1Barb. (N. Y.) 584.

[31] Shawneetown v. Baker, 85 Ill. 563.

[32] Kane v. Fond du Lac, 40 Wis. 495.

[33] One who has submitted his claim against a town to arbitration, and has appeared before, and been fully heard by the arbitrators, cannot after an adverse decision dispute the authority of the selectmen of the town to enter into the submission on its behalf. Campbell v. Upton, 113 Mass. 67; Everett v.Charlestown, 12 Allen (Mass.) 93.

[34] Schoff v. Bloomfield, 8 Vt. 372. See section 5, *supra*, stating that the power of arbitration does not extend to determining the question of damages and benefits arising from the exercise of the right of eminent domain.

[35] Dix v. Dummerston, 19 Vt. 262.

[36] "The selectmen are the agents of the town with special authority, conferred by various statutes, and defined by usage. They cannot go beyond their special limits, nor assume power which has not been conferred." Griswold v. North Stonington, 5 Conn. 367, 371; Furbish v. Hall, 8 Me. 315, overseers of poor have no power to submit claim of pauper to arbitration.

[37] Brooks v. New Durham, 55 N. H. 559.

CONSTITUTIONAL LAW—REGULATING HOURS OF EMPLOYMENT.

STATE V. BUCHANAN.

Supreme Court of Washington, September 9, 1902.

1. Acts 1901, § 1 (Sess. Laws, p. 118), providing that no female shall be employed in certain business establishments more than 10 hours in a day, does not violate Const., art. 1, § 3, providing that no person shall be deprived of liberty without due process of law, but is within the police power.

DUNBAR, J: This case involves the constitutionality of a law enacted by the legislature of 1901 (Sess. Laws, p. 118), entitled "An act to regulate and limit the hours of employment of females in any mechanical or mercantile establishment, laundry, hotel and restaurant; to provide for its enforcement and a penalty for its violation." Section 1, the subject of this discussion, is as follows: "That no female shall be employed in any mechanical or mercantile establishment, laundry, hotel or restaurant in this state more than ten hours during any day. The hours of work may be so arranged as to permit the employment of females at any time so that they shall not work more than ten hours during the twenty-four." Section 3 provides that: "Any employer, overseer, superintendent, or other agent of any such employer who shall violate any of the provisions of this act, shall, upon conviction, be fined," etc. The information charged, in substance, the violation of this law. To this information a demurrer was interposed upon the ground that no offense was charged, which demurrer was sustained by the court. From such ruling and the judgment following this appeal is taken.

This act cannot be held to be special legislation, and, if it is obnoxious to the constitution at all, it is so because it is an arbitrary restriction upon the fundamental right of the citizen (a woman in this case) to contract her labor, thereby violating section 3 of article 1 of the state constitution, which provides that no person shall be deprived of life, liberty, or property without due process of law. It may be conceded without discussion that a citizen's right to contract his or her labor is a valuable property right, which cannot be restricted by the legislature, unless such restriction

is necessary in the proper exercise of the police power of the state. Courts and law writers have found it difficult to furnish an exact definition of the term "police power," or to define its boundaries, and no other subject has been the source of so much important and earnestly contested litigation, for the citizen is jealous of what he considers to be his inalienable rights, and strenuously resists any encroachment upon his liberty; while the state, with its solicitude for the welfare of society at large, frequently finds it necessary — or at least thinks it does — to lay a restraining hand upon what is deemed by the citizen his private rights. Blackstone's definition of this power is: "The due regulation and domestic order of the kingdom, whereby the inhabitants of the state, like members of a well-governed family, are bound to conform their general behavior to the rules of propriety, good neighborhood, and good manners, and to be decent, industrious, and inoffensive in their respective stations." It has also been defined as a general system of precaution for the prevention either of crime or of calamities. It has been said to be the great power of necessity in the administration of governmental affairs. It is, in short, that power which enables the state to promote and protect the health, welfare, and safety of society; and it is essential to the very existence of government that all property should be held subject to such reasonable limitations and restraints in its enjoyment as will preclude it from acting injuriously upon the public welfare.

Conceding that an arbitrary exercise of the legislative will, which, under the guise of a police power, restricts constitutional rights, cannot be maintained, we are of the opinion that the act in question was a legitimate exercise of the police power of the state, enacted for the welfare of society at large, and is therefore constitutional. On this subject the authorities are somewhat divided, though we think the great weight of modern authority sustains statutes similar to the one under consideration. The case of City of Seattle v. Smyth, 22 Wash. 327, 60 Pac. Rep. 1120, is cited to sustain the theory of the unconstitutionality of this act. That was a *per curiam* opinion, without any discussion of the principles involved, and, while it cited with commendation the case of *In re* Morgan, 26 Colo. 415, 58 Pac. Rep. 1071, 47 L. R. A. 52, 77 Am. St. Rep. 269, on the subject under discussion, the real point decided in City of Seattle v. Smyth, was that an ordinance which makes it unlawful for any contractor upon any of the public works of the state to require or permit any day laborer or mechanic to work more than eight hours in any one calendar day was unconstitutional, on the ground that it interfered with the right of persons to contract with reference to their services. We think that all authority sustains this doctrine; but that and similar cases are not in point here, although the case cited, viz., *In re* Morgan, *supra*, did hold that a statute of the character under discussion here was unconstitutional, on the ground that the police power could not extend beyond cases where the injury was sustained by the public, and not by the individual in question. While this proposition, in the abstract, is probably true, it is not practically stated, for practically under our system of government no one citizen stands segregated entirely from the citizens at large, but that which has a delcterious effect on one citizen to some extent deleteriously affects others. In any event, this court in Ah Lim v. Territory, 1 Wash. St. 156, 24 Pac. Rep. 588, 9 L. R. A. 395, took the opposite view on that question from the Colorado court. Ah Lim was indicted for violating a statute which provided that any person or persons who shall smoke or inhale opium shall be deemed guilty of a misdemeanor, and it was contended that, inasmuch as the bad effects, if any, of such an indulgence, were visited only upon the person who inhaled or smoked the opium, it was not within the police power of the state to prohibit such smoking or inhaling, on the ground that it was interfering with inalienable rights,—the right that every man had to do what he would with his own which would not interfere with the reciprocal rights of others. In that case no special constitutional limitation or inhibition was pointed out with which the law was in conflict. The contention was based upon the broad ground that the right to liberty and the pursuit of happiness was violated, and this court held that whether the habit was detrimental to either the moral, mental, or physical well-being of one of its citizens to such an extent that he was liable to become a burden upon society was a question to be put on foot by the legislature, and a question to be determined by the legislature; and that, granting that it was a proper subject for legislative enactment and inquiry, no limit or control could be placed on the legislative discretion.

In Ritchie v. People, 155 Ill. 98, 40 N. E. Rep. 454, 20 L. R. A. 79, 46 Am. St. Rep. 315, it was held that an act prohibiting the employment of females in any factory or workshop for more than eight hours a day was unconstitutional, as it was an arbitrary restriction upon the fundmental right of the citizen to control his or her own time and faculties, and a substitution of the legislative judgment for that of the employer and employee in a matter about which they were competent to agree with each other. This is the only case cited to us, or that we have been able to find, in which an act of this kind is decided to be unconstitutional by a court of last resort. But we are not inclined to follow the reasoning of the court in that case, although it is well considered and ably presented. But some of the cases that it cites to sustain the contention that the law was invalid do not seem to us to bear out the contention. For instance, *Ex parte* Kuback, 85 Cal. 274, 24 Pac. Rep. 737, 9 L. R. A. 482, 20 Am. St. Rep. 226, where it was held, as it is universally held, that an ordinance making it a misdemeanor for any contractor to employ any person to work more

than eight hours a day, where the work was to be performed under any contract with the city, was unconstitutional. The court in that case specially distinguished this kind of a case when it said: "If the services to be performed were unlawful, or against public policy, or the employment was such as might be unfit for certain persons,—as, for example, females or infants,—the ordinance might be upheld as a sanitary or police regulation." In referring to the case of Ah Lim v. Territory, *supra*, it was said by the Illinois court: "Laws restraining the sale and use of opium and intoxicating liquor have been sustained as valid under the police power. Undoubtedly the public health, welfare and safety may be endangered by the general use of opium and intoxicating drinks. But it cannot be said that the same consequences are likely to flow from the manufacture of clothing, wearing apparel, and other similar articles." It must be borne in mind that Ah Lim was not indicted for procuring others to smoke opium, but for smoking himself, and we hardly see how the question of what the consequences would be from the manufacture of clothing or wearing apparel could affect the question of prohibiting the employment of females in the factory or workshop where these articles were made. The statute was enacted, not because the manufacture of clothing or wearing apparel had any bad affect upon society, but because the employment of women for more than eight hours a day in that character of work would have a deleterious effect upon the employees, and in a degree upon society. In opposition to the doctrine announced in Ritchie v. People it was held by the Supreme Court of Massachusetts in Com. v. Hamilton Mfg. Co., 120 Mass. 383, that a statute prohibiting the employment of women laboring in any manufacturing establishment more than 60 hours per week violated no right preserved under the constitution to any individual citizen, and that such an act could be maintained as a health or police regulation. That case is directly in point, and was favorably referred to by the Supreme Court of the United States in Holden v. Hardy, 169 U. S. 366, 18 Sup. Ct. 383, 42 L. Ed. 780, a case which came up from Utah, where it was held by the state court and affirmed by the Supreme Court of the United States that a statute limiting the period of employment of workmen in underground mines or refining of metals to eight hours a day, and making its violation a misdemeanor, was a valid exercise of the police power of the state. This case is in direct conflict with the doctrine announced in the cases of Ritchie v. People, *supra*, and *In re* Morgan, *supra*, and, if not binding upon this court, should have great weight, for the reason that the constitutional right which is claimed to have been infringed by this act is identical with the provision in the fourteenth amendment to the constitution of the United States, viz., that no state shall deprive any person of life, liberty, or property without due process of law. The rule is announced by Parker and Worthington on Public Health and Safety (page 299), as follows: "The state may forbid certain classes of persons being employed in occupations which their age, sex, or health renders unsuitable for them, as women and young children are sometimes forbidden to be employed in mines and certain kinds of factories; and statutes are perfectly valid which provide that women or minors shall not be employed in laboring by any person, in any manufacturing establishment, more than a certain number of hours in any one day, with reasonable exceptions. Of such laws it has been said that they do not violate any constitutional rights." Mr. Cooley, in his Constitutional Limitations (page 744), says: "The general rule undoubtedly is that any person is at liberty to pursue any lawful calling, and do so in his own way, not encroaching upon the rights of others. This general right cannot be taken away. It is not competent, therefore, to forbid any person or class of persons, whether citizens or resident aliens, offering their services in lawful business, or to subject others to penalties for employing them. But, here as elsewhere, it is proper to recognize distinctions that exist in the nature of things, and under some circumstances to inhibit employments to some one class while leaving them open to others. Some employments, for example, may be admissible for males and improper for females, and regulations recognizing the impropriety and forbidding women engaging in them, would be open to no reasonable objection." Ritchie v. People noticed approvingly *In re* Jacobs, 98 N. Y. 98, 50 Am. Rep. 636, where it is said; "When a health law is challenged in the courts as unconstitutional on the ground that it arbitrarily interferes with personal liberty and private property without due process of law, the courts must be able to see that it has at least in fact some relation to the public health as the end actually aimed at, and that it is appropriate and adapted to that end." Accepting this statement of the law, we think it is easily ascertainable from a perusal of this act that its object was the public health, and that its provisions were appropriate, and adopted to that end. It is a matter of universal knowledge with all reasonably intelligent people of the present age that continuous standing on the feet by women for a great many consecutive hours is deleterious to their health. It must logically follow that that which would deleteriously affect any great number of women who are the mothers of succeeding generations must necessarily affect the public welfare and the public morals.

Law is, or ought to be, a progressive science. While the principles of justice are immutable, changing conditions of society and the evolution of employment make a change in the application of principles absolutely necessary to an intelligent administration of government. In the early history of the law, when employments were few and simple, the relative conditions of the citizen and

the state were different and many employments and uses which were then considered inalienable rights have since, from the very necessity of changed conditions, been subjected to legislative control, restriction and restraint. This all flows from the old announcement made by Blackstone that when man enters into society as a compensation for the protection which society gives to him he must yield up some of his natural rights, and, as the responsibilities of the government increase, and a greater degree of protection is afforded to the citizen, the recompense is the yielding of more individual rights. Transportation companies are now controlled and restricted, where a few years ago they claimed the right to transact their business exactly as it suited their private interests. The practice of medicine is restricted and controlled; laws against quackery and empiricism are enforced without question. The sale of liquor, which formerly was a legitimate business, and which the citizen had a right to enter into as he did any other business, without any restrictions, has now become subject to the control of the state, or to actual prohibition at the will of the state. The changing conditions of society have made an imperative call upon the state for the exercise of the additional power, and the welfare of society demands that the state should assume these powers, and it is the duty of the court to sustain them whenever it is found that they are based upon the idea of the promotion and protection of society.

We think no constitutional right is invaded by this law, and the case will be reversed, with instructions to overrule the demurrer to the complaint.

NOTE. — *Right of the Legislature Under the Police Power to Regulate the Hours of Private Employment.* — The closing paragraph of the court's opinion in the principal case is a bold but ominous prophecy of the ultimate tendency of an extravagant use of the police power—the subversion of individual liberty. "When man enters into society," says the court, "as a compensation for the protection which society gives to him, he must yield up some of his natural rights, and, as the responsibilities of the government increase, and a greater degree of protection is afforded to the citizen, the recompense is the yielding of more individual rights." The statement thus made, if true, would ultimately lead to pure socialism,—the government acting as *parens patriæ* protecting us with one arm while it feeds us with the other. Such a conception of government is disgusting to sturdy Anglo-Saxonism. But the statement is not true, so far, at least, as a republican form of government is concerned. Governments are instituted among *free* men to *preserve* individual rights, not to yield them up as compensation for anything. Under that indefinable power, known as the police power, it is true, the state may in *extraordinary* cases of "*overruling necessity*" disregard these rights in the interests of the *whole* people. Nevertheless, this most dangerous of all the powers of government must be carefully restricted and confined within the limits which this statement of the extent of its operation implies. In the first place, it may be applied only to cases which threaten injury to the whole people. Circumstances occasioning injustice, hardship, pain or sorrow arise in the life of nearly every citizen, but furnish no ground for the exercise of the police power, unless those same circumstances are likely to injure the public generally. Secondly, they must be cases of overruling necessity, in which the impending evil is very apparent, and can only be averted by the prompt exercise of this *super*-constitutional power.

In view of these considerations it is quite apparent that, under ordinary circumstances, it would be a clear usurpation of power on the part of the legislature to attempt to regulate the hours of private employment,—to say how long a man shall work. Such a law would not seem so preposterous as one defining the number of hours a man should sleep, and yet, it is very well known that the greatest evil of our day is the dissipation of young men in the small hours of the night. All such legislation, however, is purely sumptuary, and, as a general rule, contrary to the spirit of constitutional government. *Ex parte* Kuback, 85 Cal. 274, 24 Pac. Rep. 737, 20 Am. St. Rep. 226; *In re* Eight Hour Bill, 21 Colo. 29, 39 Pac. Rep. 328; Low v. Rees Printing Co., 41 Neb. 127, 59 N. W. Rep. 362, 43 Am. St. Rep. 670; Ritchie v. People, 155 Ill. 98, 40 N. E. Rep. 454, 46 Am. St. Rep. 315; *In re* Morgan, 26 Colo. 415, 58 Pac. Rep. 1071. Thus, in *Ex parte* Kuback, *supra*, it was held that an ordinance of the city of Los Angeles making it a misdemeanor for any contractor to employ any person to work more than eight hours a day where the work is to be performed under any contract with the city, is an attempt to prevent persons from employing others in a lawful business, and paying them for their services, and is a direct infringement of the right of such persons to make and enforce their contracts, the court said: "If the services to be performed were unlawful or against public policy, or the employment were such as might be unfit for certain persons, as, for examples, females or infants, the ordinance might be upheld as a sanitary or police regulation, but we cannot conceive of any theory upon which a city would be justified in making it a misdemeanor for one of its citizens to contract with another for services to be rendered, because the contract is that he shall work more than a limited number of hours per day." The court, in this case, did not consider the feature of the ordinance applying the rule only to contracts for municipal work. A strong argument on this particular point is made in the case of People v. Warren, 77 Hun. (N. Y.) 120, where the Supreme Court of New York upheld a similar act on the ground that it is merely an act of the city restricting its officers as to certain contracts. The court says: "By means of this statute, the terms of employment of laborers on contract work for the city of Buffalo are fixed, on the part of the city, and it remains for the laborer seeking employment to accept or refuse those terms. If he insists upon working more than eight hours a day he may seek other employment. His liberty of choice is not interfered with nor his right to labor infringed." The conviction in this case was set aside, however, in the case of Warren v. Beck, 144 N. Y. 226, on the ground that the ordinance was not penal in its character, but merely administrative or directory of certain provisions to be inserted in city contracts. The constitutional features of the act were not discussed. The case of *In re* Eight Hour Bill, 21 Colo. 29, was an opinion of the Supreme Court of Colorado in response to a query from the legislature as to the constitutionality of a statute providing "that eight hours shall constitute a day's labor in all mines, factories

and smelters in this state." The court held that such legislation would be unconstitutional, first, on the ground that it is not competent for the legislature to single out certain industries and impose upon them restrictions with reference to the hours of labor of their employees, from which other employers of labor are exempt, and second, on the ground that laborers have a constitutional right to make their own contracts, which cannot be impaired by legislative enactments. In defiance of this decision the legislature deliberately passed the legislation which the supreme court had condemned as hostile to the constitution. The act itself therefore came before the court again, and was then emphatically laid at rest. *In re* Morgan, 26 Colo. 415. The opinion of the court is a magnificent argument against the arbitrary interference of the police power in the private concerns of the individual citizen. It will prepay careful reading and will undoubtedly do much to counteract a most dangerous tendency in recent legislation. Similar legislation was attempted in Nebraska, but was held unconstitutional on the same ground stated by the Colorado court and on the additional ground that it discriminated against farm and domestic laborers by expressly excepting them from the operation of the law. A contrary opinion, however, is held by the Supreme Court of the United States. Holden v. Hardy, 169 U. S. 366, 18 Sup. Ct. Rep. 383. While this opinion of our highest federal court is very persuasive it is not decisive of this question, and some of the state courts have boldly taken issue with the argument of the court in this case and have attempted to show the fallacy of its premises.

The question whether the labor of females can be regulated for their own protection has been variously decided. A clear idea of the fundamental principle laid down in *In re* Morgan, *supra*, would serve to solve the difficulty. Is the regulation proposed in the interest of the people as a whole or merely in protection of the individuals concerned against the consequences of their own acts? If the former is true, it is justifiable, otherwise not. On this principle, it becomes apparent that all that class of cases which sustain legislation prohibiting the employment of women in bawdy houses, saloons, dance-halls and other places are not in point. Such legislation is not in the interest of the women themselves, but in protection of the morals of the public. Neither are cases sustaining legislation prohibiting child labor. For in the first place, a child has no right of contract, and in the second place it is clearly to the interest of society that all its children shall be educated and secure a healthy development of body. In the case of females, it is well recognized that working girls are just as healthy as those that stay at home or flutter as butterflies in society. The argument in the principle case that women cannot stand long hours is disproved by the acknowledged fact that in many cases a woman's *endurance*, as distinguished from strength, is greater than a man's; and from the further fact that housewives and washer-women, very often are compelled to stand longer strains of physical fatigue than their more fortunate sisters employed in business. There being, therefore, no reason why women as a class are injured any more than men by long hours of employment there would seem to be no more reason for sustaining the constitutionality of legislation regulating the duration of a day's employment in the one case more than in the other. In favor of this view is the case of Ritchie v. People, 155 Ill. 98, 40 N. E. Rep. 454. Opposed to this rule and upholding the doctrine that in case of women as in that of children there are sufficient reasons under the police power why these hours of their employment should be regulated in the interests of society at large, if not in protection of themselves, against the consequences of their own acts, is the case of Commonwealth v. Hamilton Mfg. Co., 120 Mass. 383. Between opposing views of such learned jurists, let the lawyer and the judge proceed carefully and thoughtfully.

ALEXANDER H. ROBBINS.

JETSAM AND FLOTSAM.

WHAT IS SUFFICIENT TO RAISE A PRESUMPTION THAT A WOMAN IS PAST CHILD BEARING.

A question often arises in practice as to the circumstances under which the court will order the distribution of a fund on the presumption that a woman will die without issue. As a general rule, such an order will not be made unless the woman is at least fifty years of age; indeed, in Groves v. Groves (9 L. T. Rep. 533), Wood, V. C., went so far as to say that this was a settled rule of court, and consequently refused to make an order, though the woman was forty-nine, married, and had had no children for over twenty years, and there was also medical evidence to the effect that she was physically past child-bearing. This *dictum* was not followed in at least two later cases: *Re* Summer (22 W. R. 739), and *Re* Millner (L. R. 14 Eq. 245). In the former case the woman was forty-seven years old, and had had six children, but none within the last seventeen years, and there was evidence that she had for fourteen years suffered from a disease which rendered child-bearing improbable, if not impossible. *Re* Millner was a case of a woman who had been married for twenty-six years, had had no children, and was then aged forty-nine years and nine months. In both these cases an order was made for distribution. On the other hand, an order was refused in Conduitt v. Soane (19 W. R. 817), at the age of fifty-two, and also in Croxten v. May (39 L. T. Rep. 461), at the age of fifty-four and a-half, the lady having no children, but having been married only three years. Though the court will in general make the order in the case of a woman of fifty, especially if she is a spinster (*Re* Widdows L. R. 11 Eq. 408), there is yet no absolute presumption that a woman is incapable of child-bearing at that age; and it is stated as a fact in Co. Litt. 40*b*, that a woman had issue at the age of sixty. This being so, the order has been made in several cases subject to the recognizances of the beneficiaries to refund should the presumption turn out to be unfounded: See Fraser v. Fraser (Jac. 586*n*) and Leng v. Hodges (Jac. 585). In other cases a personal undertaking has been accepted in lieu of recognizances: Davis v. Bush (8 Jur. 111*n*). The *dictum* of Vice-Chancellor Wood in Groves v. Groves is supported by the decision in *Re* Overhill (17 Jur. 342), where an order was refused at the age of forty-nine. The result of the decisions appears to be that fifty years is the usual limit, with occasional variations on one side or the other, depending on the circumstances of each particular case, with especial reference to the medical evidence. We may add that no presumption arises in the case of a man, even at the age of eighty (Trevor v. Trevor, 2 My. & K. 677), or of ninety-five (Lushington v. Boldero, 15 Beav. 1).—*Solicitor's Journal.*

OPERATION OF NEW ZEALAND ARBITRATION ACT.

An interesting communication appeared in the *Times* of the 16th inst. with respect to the working of the

New Zealand Arbitration and Conciliation Act. This goes beyond the English act of 1896, in that it provides for an arbitration court whose awards shall be binding alike on masters and workmen. The English act enables boards of conciliation to be registered, and empowers the board of trade to assist in establishing them. It also empowers the board of trade to intervene in trade disputes to the extent of using its friendly offices to bring the parties together, and on the application of either party it may appoint a person to act as conciliator, or, on the application of both, it may appoint an arbitrator. In New Zealand it is easier to try social experiments than here, and under the colonial act disputes may be taken before a conciliation board or direct to the arbitration court. The *Times* correspondent points out that hitherto the law has worked with comparative smoothness, largely on account of the prosperous times which the country has experienced. The course of events has been in favor of the workmen, and the employers have, it is said, most loyally carried out the awards of the courts even when they have been against themselves. But recently matters have worn a less pleasant aspect and "the murmurings of discontent" which were heard when an award was given some months ago by the arbitration court against the Thames gold miners has now developed, according to the *Times* correspondent, "into a roar of violent denunciation." The court is composed of three persons — Mr. Theo. Cooper (described as one of the most able and conscientious of the supreme court judges) and representatives of the employers and of the labor unions — and apparently its decisions should command respect; but if the awards are in the future to turn in the direction of lower wages and longer hours, the system will be put to a severe trial. The English act, which aims merely at conciliation, and does not pretend to force arbitration on either party, is safe, if somewhat ineffectual. The further development of the New Zealand system will be watched with interest.

CORRESPONDENCE.

EXTRADITION — REFUSING REQUISITION OF FUGITIVE BECAUSE OF THE FEAR THAT HE WILL BE LYNCHED.

To the Editor of the Central Law Journal:

In your editorial on "Extradition" in the issue of October the 31st, it might be inferred, and I have no doubt will be by many of your readers, that the governor of Massachusetts refused to honor the requisition of the governor of North Carolina. Such is not the fact. In deference to the sentiment of a certain class Governor Crane gave a hearing to the remonstrants, but when he had heard them he refused to grant their petition. He said that it was not proper for the executive of one state to inquire into the intentions of the executive of another state, nor for one state to question the ability of another state to administer justice properly. And he sent the negro back. In justice to the common sense of Governor Crane I think this fact ought to be made known to your readers.

Very truly,
W. T. CASHMAN.

Cleveland, Ohio.

[We are pleased to have our attention called to the matter referred to in the above letter. The editorial on the "Refusal to Extradite a Fugitive Because of the Fear that he will be Lynched" was based on a remonstrance presented to Gov. Crane of Massachusetts, but, in no way, commented unfavorably on the governor himself. We rejoice to know that Gov. Crane has so well sustained his reputation for true statesmanship and common sense.—Ed.]

BOOK REVIEWS.

HOWARD'S HISTORY OF THE LOUISIANA PURCHASE.

The great Louisiana Purchase Centennial to be held at St. Louis in 1904, is not suffering for lack of sufficient heralding in publications, historical and fictitious. Among the former must be classified the recent work of James Q. Howard, claiming recognition as a "History of the Louisiana Purchase." Mr. Howard is a member of the American Historical Association, and eminently fitted for the preparation of a publication of this character.

The story commences with the earliest explorers of the Mississippi valley and the territory embraced within the term, the "Louisiana Purchase." The tales of De Narvaez, De Soto, Joliet, Marquette, and LaSalle engage the reader's attention at once, and hold it throughout the whole story which is told in a most charming and fascinating style. Thus, for instance, in briefly summarizing the explorations of De Narvaez, the first governor with authority over these regions, Mr. Howard says: "For his early exploits in Cuba, the one-eyed hero, Narvaez, was made second governor of Florida, with authority extending definitely beyond the present state of Louisiana,and indefinitely over all the forests, rivers, swamps, and savages he could conquer. The Indians and alligators came off victorious, and Narvaez perished miserably at the mouth of the Mississippi, in vessels that were not seaworthy."

Succeeding the story of the early explorations is an account of the period of settlement and transition from 1700 to the peace treaty of America with England in 1782. Sauvol, with his seat of government at Biloxi, is mentioned as the first governor. We are then introduced to two quite interesting and famous characters, — Anthony Crozat and John Law, the latter of "Mississippi Bubble" fame. Then came the awful misrule of Governor O'Reilly, under Spanish sovereignty. He most closely resembles his counterpart of modern times, "Butcher" Weyler, late governor-general of Cuba. Following this period of bloodshed and cruelty, we turn our minds with great relief to the story of the founding of St. Louis by Father Laclede in 1764, and the prosperous condition of the whole territory under the wise and victorious Galvez.

Most important of all the chapters of this book is that dealing with the absorbingly interesting and not too familiar story of the great encounters in diplomacy,with this territory as the bone of controversy, between the years 1782 and 1803. The principals in these conflicts of brain and pen were England, Spain, France and the new-born republic. It seems to have been our good fortune to have as our champions in these encounters, the equals, if not often the superiors, in diplomacy of any of the other participants. Franklin, Jay, Adams, and Livingston are the men to whom honor is due for winning victories of peace, equally as great and far-reaching as any of the achievements of our military heroes on fields of battle.

Most startling, however, are the revelations of the remarkable efforts of Robert R. Livingston, our representative at Paris at the time the Louisiana Purchase treaty was signed. It seems from the recent discovery of state documents and correspondence, that it is to Livingston rather than to Jefferson, that we owe the acquisition of this immense and profitable domain, the centennial of which we are about to celebrate. It would seem that Jefferson, then president of the United States, commissioned Livingston to secure from France a treaty making the Mississippi the

western boundary of the United States, and giving the control of New Orleans and the mouth of the big river to the United States. Even these demands were thought to be more than we had a right to ask. Mr. Livingston was in the act of representing the justice of these claims to Napoleon, when the latter, acting upon a sudden and thoughtless impulse, inquired with characteristic bluntness and promptness, whether we did not wish to have the whole of Louisiana. Livingston with characteristic Yankee modesty and foresight replied that he did not think that the objections of the American government to becoming the recipients of that strip of territory would not be insurmountable, and completed the purchase while Jefferson was in complete ignorance of the entire proposition. This revelation, we say, is somewhat startling to those who have heretofore given all the honor of the purchase to Mr. Jefferson. The latter, however, contrary to Mr. Howard's criticism, deserves the encomiums that have been accorded him, if not for originating the purchase idea, at least, for his quickness and dispatch in closing with a good bargain, especially as he had to face his own most conscientious scruples that by doing so he was "making waste paper of the constitution."

These are but a few of the interesting bits of American history which are brought out in a new light and with an unusual freshness in this very valuable addition to the historical records of this country. We commend it to all those who are interested in obtaining a thorough and accurate knowledge of a most important part of their country's history. Printed in one volume of 170 pages and published by Callaghan & Co., Chicago.

HUMORS OF THE LAW.

Counselor Law—I see you got a disagreement of the jury?

Counselor Case—Oh, yes, it was easy.

"How did you manage it?"

"Why, I got two fellows on the jury, one owns an automobile, and the other owns a horse. I knew those two would never agree."—*Yonkers Statesman.*

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

1. ADMIRALTY — Wharfage. — A suit to recover wharfage from the owner of a domestic vessel is maritime in its nature, and within the jurisdiction of a court of admiralty.—Braisted v. Denton, U. S. D. C., E. D. N. Y., 115 Fed. Rep. 428.

2. APPEAL AND ERROR — Bond.—A bond filed after the entry of a decree appealed from is no part of the record, and cannot be considered on appeal —Anderson v. Mossy Creek Woolen Mills Co., Va., 41 S E. Rep. 854.

3. APPEAL AND ERROR — Effect of Second Appeal.—Taking a second appeal does not of itself constitute an abandonment of the first appeal. — Drexel v. Rochester Loan & Banking Co., Neb., 91 N. W. Rep 254.

4. APPEAL AND ERROR — Judgment on Voluntary Nonsuit. — Defendant held not entitled to appeal from a final judgment on a voluntary nonsuit, allowed after a motion to direct a verdict had been sustained. — Florence, & C. C. R. Co. v. Maloney, Colo., 69 Pac Rep. 270.

5. APPEAL AND ERROR — Validity of Appeal Bond. — A bond given on an "appeal" inadvertently allowed by a federal court in an action at law is a nullity, which does not operate as a *supersedeas*, and is not based on any consideration which can bind the parties thereto. — Jabine v. Oates, U. S. C. C., W. D. Ky., 115 Fed. Rep. 861.

6. APPEARANCE — Effect as Conferring Jurisdiction.— Where a defendant, after its objections to the process on special appearance have been overruled, files an answer, it makes a general appearance, and all objections to jurisdiction of the person are waived. — American Mutual Life Ins. Co. v. Mason, Ind., 64 N. E. Rep. 525.

7. ATTACHMENT — Nonresidence.— Under Act April 26, 1898, repealed in 1900, amending Rev. St. § 5521, and not making nonresidence in the state a ground for attachment, an order of attachment issued on that ground, while said amended section was in force, is invalid.— Hough v. Dayton Mfg. Co., Ohio, 64 N. E. Rep. 521.

8. BANKRUPTCY — Action Against Receiver. — A final decree rendered in a proceeding by a third person to recover property in the possession of the receiver of a bankrupt is reviewable by a direct appeal as in cases in equity. — Walter Scott & Co. v. Wilson, U. S. C. C. of App , Seventh Circuit, 115 Fed. Rep. 284.

9. BANKRUPTCY — After Acquired Title. — A voluntary bankrupt under the bankruptcy act of 1867 had the right, in person or through another, to purchase his real property sold by the trustee. — Hallyburton v. Slagle, N. Car , 41 S. E. Rep. 877.

10. BANKRUPTCY — Books of Account. — The fact that loans made to a bankrupt and not entered by him in his regular account books were made before the bankrupt act was passed did not excuse his failure to enter them, as required by the bankrupt act — *In re* Feldstein, U. S. C. C. of App , Second Circuit, 115 Fed. Rep. 259.

11. BANKRUPTCY — Concealment of Assets. — A bankrupt held debarred from the right to a discharge on the ground that he knowingly and fraudulently concealed from his trustee money standing to his credit in bank.— *In re* Otto, U. S D. C., D. N. J., 115 Fed. Rep. 860.

12. BANKRUPTCY—Deductions of New Credits.—Bankr. Act. 1898, § 60c, entitles a creditor to deduct the amount of new credits from the preferences he would otherwise be required to surrender before proving his debt.— Kahn v. Cone Export & Commission Co., U. S. C. C. of App., Fifth Circuit, 115 Fed. Rep. 290.

13. BANKRUPTCY — Discount of Debtor's Note.—Where a note given on an account has been discounted in the usual course of business, even with the indorsement of the payee, and the proceeds applied on the debtor's account, it should be regarded as a payment of money by the debtor as of that date, for the purpose of determining the question of preference after the debtor's bankruptcy, provided the note did not come back to the payee for failure of the bankrupt to pay the same.—*In re* Wiessner, U. S. D. C., 115 Fed. Rep 421.

14. BANKRUPTCY — Dismissal of Involuntary Petition. —A respondent, against whom a petition in involuntary bankruptcy has been filed, is entitled to costs on its dismissal; but no allowance of counsel fees or damages is authorized, unless his property has been taken from his possession thereunder. — *In re* Morris, U. S. D. C., E. D. Pa., 115 Fed. Rep. 591.

15. BANKRUPTCY — Homestead. — Bankruptcy court held to have jurisdiction under Bankr. Law 1898, § 70, and V. S § 2186, to sell so much of homestead, subject to mortgage thereon, as will satisfy debts of bankrupt existing before acquisition of homestead. — *In re* Gordon, U. S. D. C , D. Va., 115 Fed. Rep. 445.

16. BANKRUPTCY — Separate Petitions and Adjudications. — Where the members of a firm which files a voluntary petition in bankruptcy seek a discharge from individual, as well as firm debts, each should file individual petitions, and the matter should be otherwise treated as if there were separate cases as to each partner. — *In re* Farley, U. S. D. C., W. D. Va., 115 Fed. Rep. 359.

17 BANKRUPTCY—Suit in State Court.—An action by a trustee in bankruptcy to recover assets must be prosecuted in the state court, unless defendant in such action consent to its prosecution in the federal court. — McIntyre v. Malone, Neb., 91 N. W. Rep. 246.

18. BANKRUPTCY — Validity of Chattel Mortgage. —A chattel mortgage on goods, giving the mortgagor the right to sell the goods and replace the same with others, to come under the mortgage, is fraudulent and void in bankruptcy proceedings.—*In re* Hull, U. S. D. C., D. Vt., 115 Fed. Rep. 858.

19. BANKS AND BANKING — Failure to Protest a Note.— Where plaintiff bank failed to protest a check sent it for collection, whereby the indorser and the drawer were discharged, held, that the owner thereof was damaged *prima facie* to the full amount of the check. — Ft. Dearborn Nat. Bank v. Security Bank, Minn., 91 N. W. Rep. 257.

20. BANKS AND BANKING — Intervention of National Bank. — Though attachment against a national bank cannot be maintained in a state court, such bank may intervene in attachment and claim the property; and it does not thereby become a party, so as to authorize dismissal of the action. — Willard Mfg. Co. v. Geo. H. Tierney & Co., N. Car., 41 S. E. Rep. 871.

21. BANKS AND BANKING — Statement to Surety Company. — A president of a bank, without special authority, cannot bind the bank by an incorrect statement as to the cashier's account, furnished to a surety company to assist the cashier to obtain a bond to secure the faithful discharge of his duties.—United States Fidelity & Guaranty Co. v. Muir, U. S. C. C. of App., Second Circuit, 115 Fed Rep. 264.

22. BILLS AND NOTES — Action on Note.—In an action on a note, an issue whether defendant was an accommodation indorser and surety is irrelevant, where any indorser could be sued without joining the maker or other surety.—State Bank v. Carr, N. Car., 41 S. E. Rep. 876.

23. BUILDING AND LOAN ASSOCIATIONS—Rights of Purchaser Assuming Mortgage. — A purchaser of property, who assumed payment of a loan thereon to a building and loan association as a part of the purchase price, held not entitled to interpose the defense of usury or to be credited on the principal with amount of premiums paid. — Deitch v. Staub, U. S. C. C. of App., Sixth Circuit, 115 Fed. Rep. 309.

24. BURGLARY — Possession of Stolen Goods. — Recent and unexplained possession of stolen goods, with other incriminating circumstances, held sufficient to convict of housebreaking.—Branch v. Commonwealth, Va., 41 S. E. Rep. 862.

25. CARRIERS — Fraudulent Use of Pass. — Under Act June 10, 1897, held, that a conviction could not be had for the attempted use of a pass containing no expressed conditions, except that it should be taken up on presentation by other than the person named therein.— Allardt v. People, Ill., 64 N. E. Rep. 533.

26. CARRIERS — Interstate Commerce. — A shipment of grain over a single railroad between points within the same state is not an interstate shipment, and within the terms of the interstate commerce act, because the line of road between such points passes through other states. — United States v. Lehigh Val. R. Co., U. S. D. C., W. D. N. Y., 115 Fed. Rep. 373.

27. CARRIERS—Payment of Charges.—The existence of the relation of carrier and consignee will not establish a liability on the part of the latter to pay the freight charges, in absence of agreement. — Central R. Co. of New Jersey v. MacCartney, N. J., 52 Atl. Rep. 575.

28. CHINESE LABORER—Proceedings to Deport.—Under 27 Stat. 25, § 6, as amended by 28 Stat. 7, a Chinese person who was a merchant and lawfully in the United States in 1892-94, and afterwards became a laborer, cannot be deported for failing to have a laborer's certificate. — *In re* Chin Ark Wing, U. S. D. C., D. Mass., 115 Fed. Rep. 412.

29. COLLISION—Failure to Change Course.—Where two steamships meeting on the Great Lakes came in collision because one failed to change her course and the other changed insufficiently, although there was room for both to have changed so as to pass in safety, both will be held in fault.—The Mary C. Elphicke, U. S. D. C., W. D. N. Y., 115 Fed. Rep. 375.

30. COLLISION — Steam Vessels Crossing. —A vessel which assents by signal that another shall cross her bows cannot urge the attempted maneuver as a fault, though it results in a collision.—The Arthur M. Palmer, U. S. D. C., E. D. N. Y., 115 Fed. Rep. 417.

31. COMMERCE — Domestic Telegraph Message.—Telegram, where initial and terminal points are both in the same state, held a domestic message, subject to penalty for delay in delivery under Code, § 1291.—Western Union Tel. Co. v. Reynolds, Va., 41 S. E. Rep. 856.

32. COMMERCE — License Tax.—Laws 1901, c. 9, § 54, imposing a license tax upon peddlers, held not repugnant to Const. U. S. art. 1, § 8, as applied to a publishing company shipping books in original packages from without the state to its agents within, and by them delivered to purchasers.—P. F. Collier & Son v. Burgin, N. Car,. 41 S. E. Rep. 874.

33. COMMERCE—State Law Regulating Sale of Liquors. —Wilson Act Aug. 8, 1890, does not authorize a state to interfere with the sale and purchase of liquors between citizens of different states, or with the soliciting of orders in a state by a dealer whose place of business is in another state. — *In re* Bergen, U. S. C. C., D. Kan., 115 Fed. Rep. 339.

34. CONSPIRACY — Sufficiency of Indictment. — An indictment under Rev. St. § 5438, for a conspiracy to defraud the United States by obtaining the allowance of a fraudulent claim, must set out the particulars in which such claim was fraudulent —United States v. Greene, U. S. D. C., E. D. Ga., 115 Fed. Rep. 343.

35. CONTRACTS — Agreement to Support Grantor for Life. — Where land is deeded under agreement that the grantee shall support the grantor for life, no demand of performance is necessary before suit for breach, and especially where, by alienating the property, the grantee has renounced the contract. — Van Horn v. Mercer, Ind., 64 N. E. Rep. 531.

36. CONTRACTS — Partial Performance. — Substantial completion of all work under a contract held a condition precedent to right to require payments thereunder.

—Riddell v. Peck-Williamson Heating & Ventilating Co., Mont., 69 Pac Rep. 241.

37. CONTRACTS—What Law Governs Enforcement.—A contract, although recognized as valid by the laws of the state where made, will, in general, not be enforced by the courts of another state, where it is contrary to morals, or to the public policy or statutes of such state.—Parker v. Moore, U. S C. C. of App , Fourth Circuit, 115 Fed. Rep 799.

38. CONVERSION—Will of Minor.—Where lands of infant are sold under order of court, and funds are paid into court, they are not thereby converted into personalty.—Major v. Hunt, S. Car., 41 S. E. Rep 816.

39. CORPORATIONS—Mismanagement.—An action by a shareholder against directors of a corporation for mismanagement cannot be maintained, without alleging that plaintiff or other shareholders demanded the board of directors or the receiver of the corporation to bring such action.—Coble v. Beall, N. Car., 41 S. E. Rep. 793

40. CORPORATIONS—Stock Certificate.—A stock certificate, on its face transferable only on the books of the company on surrender of the certificate, and transferred in blank upon its back, is not a negotiable instrument. —Farmers' Bank v. Diebold Safe & Lock Co., Ohio, 64 N. E. Rep. 518.

41. COUNTIES—Extradition Expenses.—Under Rev. St., § 8425, the expenses incurred in extradition proceeding are a state charge, and not a charge against the county wherein the prosecution against such fugitive may be pending.—Kroutinger v. Board of Examiners, Idaho, 69 Pac. Rep. 279.

42. COURTS—Equity Jurisdiction.—The inherent jurisdiction in equity of courts of the United States cannot be narrowed by state laws conferring jurisdiction of certain matters upon a particular state court, even though such jurisdiction is made exclusive so far as the state courts are concerned.—Hale v. Tyler, U. S. C. C., D. Mass., 115 Fed. Rep. 833.

43. CRIMINAL LAW—Complaint.—A complaint charging that defendant carried concealed about his "peurson," or "purson," a "pestol," against the peace of the state, etc., held not insufficient.—Hampton v. State, Ala., 32 South. Rep. 230.

44. CRIMINAL LAW—"Reasonable Doubt."—A charge that reasonable doubt is a doubt for which a reason can be given is properly refused as confusing.—Cawley v. State, Ala., 32 South. Rep. 227.

45. CRIMINAL TRIAL—Agreement Between Attorneys as to Punishment —An agreement between the solicitor for the state, and the defendant's attorney as to the punishment to be inflicted on defendant, pleading guilty, held not binding on the jury.—Durrett v. State, Ala., 32 South. Rep. 234.

46 DAMAGES — Financial Condition of Defendant.—Where, in trespass, the case justified punitory damages, proof of defendant's financial condition was admissible.—Gilman v. Brown, Wis , 91 N. W. Rep. 227.

47. DAMAGES—Personal Injuries.—Where, in an action for injuries, no special damages are alleged evidence that plaintiff had been employed in earning money before the injuries, and that he had learned a trade, was inadmissible —Krueger v. Chicago & A. Ry. Co., Mo., 68 S. W. Rep. 220.

48. DAMAGES—Special Profits.—In an action against a railroad for negligently failing to deliver machinery, the admission of evidence as to loss of special profits held error.—Sharpe v. Southern Ry. Co., N. Car., 41 S. E. Rep. 799.

49. DEPOSITIONS—General Interrogatories.—In an action on a note, objections to interrogatories in a deposition as too general and practically depriving defendant of the right to cross-examine held properly overruled —Cator v. Chamberlain, Tex., 68 S. W. Rep. 196.

50. DESCENT AND DISTRIBUTION—Mental Capacity to Execute Deed.—In an action by heirs against other heirs to set aside certain deeds executed by decedent, and for a division of the decedent's lands, it was error to require defendants to pay any part of the fees of plaintiff's attorneys.—Nichols v. King, Ky., 68 S. W. Rep. 133.

51. DIVORCE—Allowance of Attorney Fee.—In determining the fee to be allowed the wife's attorney, the court should look both to the character of the services and the husband's pecuniary ability.—Powell v. Lilly, Ky., 68 S. W. Rep. 123.

52. EMINENT DOMAIN—Abandonment of Easement — The condemnation of right of way for a railroad over lands previously condemned by a city for park purposes does not effect an abandonment by the city of its easement, so as to work a reversion of the land to the owner of the fee.—Newton v. Manufacturers' Ry. Co., U. S. C. C. of App., Sixth Circuit, 115 Fed. Rep. 781.

53. EMINENT DOMAIN—Stock Pens.—A railroad company is liable for injuries to adjacent property resulting from the con-truction and operation of cattle pens, though it has been guilty of no negligence whatever.—Bramlette v. Louisville & N. R. Co., Ky., 68 S. W. Rep. 145.

54. EQUITY—Findings of Master.—Where it appears from the report of a master, which is not contradicted, that neither party requested a finding on a particular matter, but the same was virtually waived, the court will not, on exceptions to the report, refer it back to have such finding made.—Reading Ins. Co. v. Egelhoff, U S. C C., W. D. Mo., 115 Fed. Rep. 393.

55. EVIDENCE—Ancient Document —A deed executed more than 50 years before being offered in evidence, and which came from the proper custody, is admissible as an ancient document.—Kansas City v. Scarritt, Mo., 69 S. W. Rep. 283.

56 EVIDENCE—Books of Account.—Where books of account are properly received in evidence and are subject to inspection, and an examination is necessary, it is proper to receive balances and summaries thereof from an expert who has made the same.—State v. Salverson, Minn., 91 N. W. Rep. 1.

57. EVIDENCE—Parol. — Parol evidence held admissible to show that a recital in a recital in a mortgage that it was given to secure a $430 note was a mistake, and that the note was for $450.—Boren v. Boren, Tex., 68 S. W. Rep 184.

58. EVIDENCE—Proof of Partnership.—Admissions by one partner, in the absence of another, as to the state of accounts between plaintiff and the defendant firm, held admissible against the absent partner.—Parker v. Paine, 76 N. Y. Supp. 942.

59. EVIDENCE—Written Instruments.—Where an expression of a written contract is shown by extrinsic matters to be ambiguous, the fact that the ambiguity was disclosed by defendant's cross-examination does not affect defendant's right to explain the ambiguity.—Rodger v. Toilettes Co , 76 N. Y. Supp. 940.

60. EXCEPTIONS, BILL OF—Extension of Time.—Where a bill of exceptions was not duly filed, and the record proper contains no order extending the time, it cannot be considered, though the bill recites that the time was twice extended.—Knight v. Bergmann, Mo., 68 S. W. Rep. 237.

61. EXECUTION—Void Judgment.—An execution, void because the judgment under which it was issued was void, cannot be validated by an amendment to the judgment subsequent to the issuance of the execution.—Underwood v. Brown, Tex., 68 S. W. Rep. 206.

62. EXECUTORS AND ADMINISTRATORS — Continuing Decedent's Business.—An estate held liable for expenses incurred by the administratrix in continuing the decedent's manufacturing business under order of the county court —Fleming v Kelly, Colo , 69 Pac Rep. 272.

63. EXECUTORS AND ADMINISTRATORS—Judicial Sale.—An administrator's sale by order of court is a judicial sale, and therefore misrepresentations by the administrator are no defense to an action by him against a bidder for damages for failing to keep the bid good, as

tne rule of *caveat emptor* applies to judicial sales.—Culli v. House, Ala., 32 South. Rep. 254.

64. EXECUTORS AND ADMINISTRATORS—Right of Creditors to Demand Accounting.—A creditor of decedent's estate has a sufficient interest therein to maintain proceedings in a probate court to compel the executor or administrator to account for assets received by him.—Lewis v. Parrish, U. S. C. C. of App., Second Circuit, 115 Fed Rep. 285.

65. EXECUTORS AND ADMINISTRATORS—Sale of Estate Property.—Judgment creditors of an estate are indispensible parties to a suit to enjoin the administrator from selling estate real property for the payment of such judgments.—Evans v. Gorman, U. S. C. C., E. D. Ark., 115 Fed. Rep. 399.

66. EXEMPTIONS—Right of Creditors.—Where a chattel mortgage covering exempt and nonexempt property has been recorded, the mortgagor can require the mortgagee, in foreclosing, to first exhaust the nonexempt property.—Baughn v Allen, Tex., 68 S. W. Rep. 207.

67. EXPLOSIVES—Liability of Owner.—A corporation keeping gunpowder in a magazine held liable for the damages occasioned by an employee maliciously setting fire to the gunpowder —Kleebauer v. Western Fuse & Explosives Co., Cal., 69 Pac. Rep. 272.

68. FEDERAL COURTS—Parties —Where the jurisdiction of the federal court to grant an injunction is based on a diversity of citizenship, the omission of a necessary party, who cannot be made a party without defeating the jurisdiction of the court, requires a dismissal of the cause.—Evans v. Gorman, U. S. C. C., E. D. Ark., 115 Fed. Rep. 399.

69. FENCES—Criminal Prosecution.—To show possession by one prosecuted for breaking a fence, he may introduce petition in a pending action of trespass to try title by the prosecutor against him, alleging possession of the property in him.—McCuen v. State, Tex., 68 S. W. Rep. 180.

70. FIRE INSURANCE — Valuation of Goods —An insured, who, pending efforts at an arbitration to determine the damage to goods by fire, against the protest of the insurance companies proceeds to sell such goods at auction, cannot insist that the companies are concluded as to their value by the amount realized.—Reading Ins. Co. v. Egelhoff, U. S. C. C., W. D. Mo., 115 Fed. Rep. 393.

71. FORGERY—Verdict —A verdict, "We the jury, find the defendant guilty of attempting to pass a false and forged instrument in writing," held sufficient. — Straggins v. State, Tex., 68 S. W. Rep. 170.

72. FRAUDULENT CONVEYANCES. — Burden of Proof. — Where a debtor in failing circumstances transfers his property to a near relative, the burden of proving a sufficient consideration and good faith is on the grantee. —Lusk v. Riggs, Neb., 91 N. W. Rep. 243.

73. FRAUDULENT CONVEYANCES— De Facto Register.—Where an act attaching territory to a county is unconstitutional, but is acquiesced in, it renders the acts of the register of deeds of such county, done before the law was declared unconstitutional, acts of a *de facto* officer.—State Bank v Frey, Neb , 91 N. W. Rep. 239.

74. FRAUDULENT CONVEYANCES — Inadequacy of Consideration.— Where a conveyance is made by a grantor who is indebted at the time, upon a valuable consideration that is inadequate, such inadequacy does not render the conveyance voluntary. — Brown v. Case, Oreg., 69 Pac. Rep. 43.

75. FRAUDULENT CONVEYANCES —Intent. — A fraudulent intent to hinder and delay other creditors cannot be inferred from a provision of an instrument assigning securities to one creditor that, in the event a contemplated adjustment of the debtor's affairs is made, the securities shall be returned. — McCartney v. Earle, U. S C. C of App., Third Circuit, 115 Fed. Rep. 462.

76. FRAUDULENT CONVEYANCES — Mortgage. — The fraudulent action of an owner of land in keeping the title in another's name and having the latter execute a mortgage thereon held to render the mortgage void as against a subsequent creditor. — Baltimore High Grade Brick Co. v. Amos, Md., 52 Atl. Rep. 582.

77. FRAUDULENT CONVEYANCES — Sufficiency of Petition.—In an action to set aside a conveyance as fraudulent the petition is sufficient if it alleges the conveyance was made with intent to defraud creditors. — McIntyre v. Malone, Neb., 91 N. W. Rep. 246.

78. GAMING— Musical Slot Machine. — A musical slot machine could not be seized as a preventive measure, unless it had first been established in a criminal proceeding that it was designed or used for an illegal purpose.—Wagner v. Upshur, Md., 52 Atl. Rep. 509.

79. GARNISHMENT— Maturity of Case for Judgment. — A contention in an action, defendant in which had been trusteed, that when a finding for plaintiff was filed the case was ripe for judgment, nothwithstanding defendant's motion for continuance, held without merit.—Gilchrist v. Cowley, Mass., 63 N. E. Rep. 912.

80. GIFTS—Cause Mortis — On an issue whether there had been a gift *cause mortis* by a decedent, evidence held sufficient to support a finding she at the time was conscious of her condition and did not expect to recover.—Darling v. Emery, Vt., 52 Atl. Rep. 517.

81. GROUND RENTS— Construction of Will. — A bill in equity to redeem rents is in the nature of specific performance, and under it the court could construe a will under which the defendants claimed title. — Plaenker v. Smith, Md., 52 Atl. Rep. 606.

82. HAWKERS AND PEDDLERS.—Under Laws 1901, ch. 9, § 54, a publishing company, selling and delivering books in sets through agents, held a peddler, and liable for a license tax. — P. F. Collier & Son v. Burgin, N. Car., 41 S. E. Rep. 874.

83. HAWKERS AND PEDDLERS — Licenses. — One who traveled on foot, making sales by sample, afterwards delivering the goods on foot, not using a wagon, cart, or buggy in any manner. held not a peddler, within Laws 1901, ch. 9.—State v. Franks, N. Car., 41 S. E. Rep. 785.

84. HEALTH — Contagious Disease. — In an action against a physician under 2 Comp. Laws 1897, § 4453, for failure to report a case of consumption, it was error to submit a question whether consumption is to be classed as a dangerous disease. — People v. Shurly, Mich., 91 N. W. Rep. 139.

85. HIGHWAYS—Change of Grade —Under Burns' Rev. St. 1901, § 6872, county commissioners have no authority to cut down an established grade in one place to obtain necessary material for repairing another place.—Board of Comrs. of Warren County v. Mankey, Ind., 63 N. E. Rep 864.

86. HOMICIDE— Insanity. — Insanity is relied on as a defense to murder, the court cannot properly instruct that, though accused could distinguish between right and wrong, he was not guilty, if he was moved to the action by an insane impulse, controlling his will.—Cawley v. State, Ala., 32 South. Rep. 227.

87. HOMICIDE — Instruction. — An instruction that, though the indictment is for murder in the first degree, the jury "can" find the defendant guilty of a lesser degree, or not guilty, as the evidence warrants, is not erroneous in using the word can. — Territory v. Gonzales, N. Mex., 68 Pac. Rep. 925.

88. INDEMNITY—Discharge of Sureties. — Payment of a judgment in a suit against sureties, in which indemnitors had been acting with defendant, without the indemnitor's consent, held to discharge such sureties on the indemnity bond from further liability.—American Surety Co. v. Ballman, U. S. C. C. of App., Eighth Circuit, 114 Fed. Rep. 292.

89. INDICTMENT AND INFORMATION — Striking with Deadly Weapon. — Under an indictment for willfully striking another with a deadly weapon with intent to kill, if the weapon used was not a deadly weapon, the defendant may be found guilty of assault and battery. Commonwealth v. Yarnell, Ky., 68 S. W. Rep. 136.

90. INFANTS — Marriage Without Consent of Tutrix.— A minor's marriage without the consent of her tutrix, though in every respect legal, will not emancipate her from disabilities or minority. — Guillebert v. Grenier, La., 32 South. Rep. 288.

91. INSURANCE—Platform of Moving Train. — Passenger stepping out on platform of moving train held within exception of accident policy excluding liability for injuries so received. — Overbeck v. Travelers' Ins. Co., Mo., 68 S. W. Rep. 236.

92. INTERNAL REVENUE — Warehouse Receipts.—Postal card, sent out by warehouse company, notifying consignee of goods of their house, etc., held not to be warehouse receipts within the war revenue act, and not subject to stamp tax as such. — McClain v. Merchants' Warehouse Co., U. S. C. C. of App., Third Circuit, 115 Fed. Rep. 295.

93. JOINT ADVENTURES — Breach of Contract. — On breach of contract in refusing to admit plaintiff to any participation in property which plaintiff and defendant agreed to buy together for a resale, the measure of damages is the profit that would be realized on a sale. —Corotinsky v. Maimin, 76 N. Y. Supp. 924.

94. JUDGES—Vacating Bench.— It was the duty of the regular judge to vacate the bench upon the filing of an affidavit that the judge had declared that plaintiff had no right to the land in controversy. — Chenault v. Spencer, Ky., 68 S. W. Rep. 128.

95. JUDGMENT—Submission to Arbitration.—A decree will not be merged by an award on the same original cause of action not made the decree of a court; but, where the first judgment is the subject of the arbitration, it is merged by an award whether carried into judgment or not. — Turner v. Stewart, W. Va., 41 S. E. Rep. 924.

96. JURY—Exemption from Service.—P. L. 1900, p. 458, exempting members of the National Guard from jury duty, does not create a disqualification, and it is no ground for challenge that the venire includes the name of a member of such guard. — State v. Barker, N. J., 52 Atl. Rep. 284.

97. JURY — Special Venire. — Where persons appear both on a special venire and on the list of jurors served and summoned for the week, the venire is quashable —Cawley v. State, Ala., 32 South. Rep. 227.

98. JUSTICES OF THE PEACE—Forcible Detainer.—Where the lessee of a warehouse agreed that as the whisky came out of bond he would collect the taxes thereon, the lessor was entitled to a writ of forcible detainer on the failure of the lessee to comply with his contract.— Walker v. Dowling, Ky., 68 S. W. Rep. 135.

99. LICENSES—Standing Stallion.—Under Ky. St. § 4201, an indictment for standing a stud horse without license need not allege that defendant was "engaged in the business" of standing a stud horse, nor the amount of property or money received for the service. — Asher v. Commouwealth, Ky., 68 S. W. Rep 130.

100. LIFE ESTATES—Taxation of Trust Fund. — Where testator's will provided that his widow should be paid the interest on a certain fund for life, and there was no other property from which taxes on the fund could be paid, they were payable from the principal —Crater v. Ryan, N. Car., 41 S. E. Rep 800.

101. LIFE INSURANCE—Acceptance of Premium.—The acceptance of insurance premiums after knowledge of breach of conditions of the policy held to estop the company from relying on such breach. — Hennessy v. Metropolitan Life Ins Co., Conn., 52 Atl. Rep. 490.

102. LIFE INSURANCE—Evidence.— The jury in an action on a life policy, in which the validity of a settlement made by the agent is in issue, may refuse to believe the testimony of the agent, in behalf of the company, though uncontradicted. — Franklin Life Ins. Co. v. Villeneuve, Tex., 68 S. W. Rep. 203.

103. LIMITATION OF ACTIONS— Lis Pendens. — Limitation held not to run in favor of a grantee of land against one recovering the land from his grantor, in an action of which the grantee had notice, until the termination of the action. — McLean v. Baldwin, Cal., 69 Pac. Rep 259.

104. LIMITATION OF ACTIONS— Suit Tolls the Statute.— The institution of a suit to foreclose a mortgage before the note is barred by the statute tolls the statute on the note — Harris v. Nye & Schneider Co., Neb., 91 N. W. Rep. 250.

105. LOGS AND LOGGING—Lumberman's Lien —A contract to pay claims against a lumberman, which are subject to lien, does not create a liability to pay a sum advanced generally to a lumberman, but which he uses to pay taxes.—Hyde v. German Nat. Bank, Wis., 91 N. W. Rep. 230.

106. MANDAMUS — Board of Examiners. — Mandamus will not lie to compel the state board of examiners to audit a claim on which it has already acted.—Kroutinger v. Board of Examiners, Idaho, 69 Pac. Rep. 279.

107. MANDAMUS — Stock Law.—On refusal of Chatham county commissioners to establish stock law in certain territory, under Laws 1901, c. 531, mandamus held a proper remedy. — Perry v Commissioners of Chatham County, N. Car., 41 S. E. Rep. 787.

108. MASTER AND SERVANT—Assumption of Risk.—The fact that a laborer employed for one day is afraid he will be discharged if he does not obey the orders of his foreman to do work which the laborer knows is dangerous does not prevent the doing of the work from being an assumption of the risk. — Orr v. Southern Bell Telephone & Telegraph, Co., N. Car., 41 S. E. Rep. 880.

109. MASTER AND SERVANT — Defective Appliances.—A ship held liable for the injury of a rigger, resulting from the giving way of a nail used as a substitute for a larger steel pin, which was part of the machinery of a winch.—The Nordfarer, U. S. D. C., E. D. N. Y., 115 Fed. Rep. 416.

110. MASTER AND SERVANT — Defective Automatic Coupler.—A railroad is liable to an employee injured, owing to an automatic coupler having been out of repair, where there had been a reasonable time for repair.—Elmore v. Seaboard Air Line Ry. Co., N. Car., 41 S. E. Rep. 786.

111. MASTER AND SERVANT — Duty to Warn of Special Risks. — It is the duty of a master to notify a servant of special or extraordinary risks connected with his service, the responsibility of which he cannot escape by delegating it to another servant.—Mercantile Trust Co. v. Pittsburgh & W. Ry. Co. U. S. C. C. of App., Third Circuit, 115 Fed. Rep. 475.

112. MASTER AND SERVANT — Superior Servant Rule.— Where the negligence of a fellow servant is as to some duty incidental to the general employment, the master is not responsible, although the negligent servant was superior in rank to him who was injured —Knutter v. New York & N. J. Tel. Co., N. J., 52 Atl. Rep. 565.

113. MECHANICS' LIENS — Ground Rent. — A material man, selling materials to a lessee to erect buildings on leased property, with knowledge that a ground rent is reserved to the owner, cannot subject the ground rent to the payment of his claim —Baltimore High Grade Brick Co. v. Amos, Md., 52 Atl. Rep. 582.

114. MORTGAGES — Merger. — Where the owner of a mortgage who purchases the fee intends to keep the two estates distinct, no merger will result.—Ames v. Miller, Neb., 91 N. W. Rep. 250.

115. MORTGAGES — Time of Sale in Foreclosure. — Sale under mortgage foreclosure the day after that named in the notice is void. — Brown v. Belles, Colo., 69 Pac. Rep. 275.

116. MUNICIPAL CORPORATIONS.—Substantial Performance of Contract. — A city cannot escape liability for work done in substantial conformity to the contract, because its officers have refused to certify and approve the same as required by the contract, before payment, where such refusal was arbitrary or unreasonable.—City of Elizabeth v. Fitzgerald, U. S. C. C. or App., Third Circuit, 114 Fed. Rep. 547.

117. MUNICIPAL CORPORATIONS — Use of Park for Railroad Station. — Residents of a city, whose interest in a park differs only in degree from other residents, cannot sue to enjoin its condemnation for a railroad station. —Manson v. South Bound R. Co. S. Car., 41 S. E. Rep. 832.

118. MUNICIPAL CORPORATIONS — Use of Streets. — A city is not entitled to compensation for rights granted by it for a use of the streets during a time when the enjoyment of the right is prevented by the city itself.— National Subway Co. v. City of St. Louis, Mo., 69 S. W. Rep. 290.

119. NEGLIGENCE — Coal Hole in Sidewalk. — An abutting owner who maintains a coal hole in a sidewalk in a city street held liable to a traveler stepping on the lid and slipping into the hole, irrespective of any liability on the part of the city.—O'Malley v. Gerth, N. J., 52 Atl. Rep 563.

120. NEGLIGENCE — Contributory Negligence — In an action for injuries sustained by a boy about 11 years old, an instruction that the jury should consider the age and intelligence of plaintiff at the time of the injury in determining the issue of contributory negligence was proper.—Missouri, K. & T. Ry. Co. of Texas v. Scarborough, Tex., 68 S. W. Rep. 196.

121. NEGLIGENCE — Injury to Servant. — A foreman's failure to warn a laborer as a load of earth and stone was dumped into a deep trench where he was at work held not a breach of duty to provide a safe place to work.—McLaine v. Head & Dowst Co., N. H., 52 Atl. Rep. 545.

122. NEW TRIAL — Filing Motion in Clerk's Office. — A motion for a new trial will not be considered when filed in the clerk's office.—Klein v. Myers, Ky., 58 S. W. Rep. 144.

123. NUISANCE — Powder Magazine. — The maintenance of a powder magazine, wherein was kept 5,000 pounds of gunpowder within 250 yards of numerous dwellings, was a nuisance *per se*.—Kleebauer v. Western Fuse & Explosives Co., Cal., 69 Pac. Rep. 246.

124. OFFICERS — Removal. —Under Const., art. 20, § 16, an officer whose term of office is not fixed by law holds at the pleasure of the appointing power, and may be removed without cause. — Sponogle v. Curnow, Cal., 69 Pac. Rep. 255.

125. PARTNERSHIP—Liability.—In settling the affairs of a defunct partnership, it was proper to render judgment against members who had purchased the interest of retiring members.—Strang v. Thomas, Wis., 91 N. W. Rep. 237.

126. PENSIONS — Issuance After Death of Pensioner. — Pension warrant issued after death of pensioner does not belong to his estate, but should be returned for cancellation.—*In re* Smith, N. Car., 41 S. E. Rep. 804.

127. PRINCIPAL AND AGENT — Authority of Agent. — A general agency to manage or sell plaintiff's property held not to confer authority to enter into a copartnership on plaintiff's behalf.—Guy v. Rosewater, Colo., 69 Pac. Rep. 271.

128. PRINCIPAL AND SURETY — Building Contract.—Act of owner in violating building contract as to manner of payment to contractor, and in furnishing additional money above the contract price, held not to release the sureties.—Brown Iron Co. v. Templeman, Tex . 69 S. W. Rep. 249.

129. RAILROADS — Contributory Negligence. — A trespasser, who walked upon a railroad track on an embankment eight feet high, and was struck and killed by a passing train, was guilty of contributory negligence as matter of law.—Louisville & N. R. Co. v. McClish, U. S. C. C. of App., Sixth Circuit, 115 Fed. Rep. 268.

130. RAILROADS — Crossing Accident. — Where plaintiff, injured at railroad crossing, shows failure to give the statutory signals, the burden is on defendant to show his want of care.—Bishop v. Southern Ry., S Car., 41 S. E. Rep. 808.

131. RAILROADS — Ejection of Trespasser. — Where brakemen on freight trains commonly eject trespassers from trains with the approval of the officers of the company, the railroad is liable for the act of a brakeman in forcing a trespasser to jump from a moving train — Krueger v. Chicago & A. Ry. Co., Mo., 68 S. W. Rep. 220.

132. RAILROADS — Fires from Locomotive.—Where fire is shown to have started from a passing locomotive, the burden is on the company, in an action therefor, to show that the locomotive was properly constructed equipped, and operated.—Great Northern Ry. Co. v. Coats, U. S. C. C. of App., Eighth Circuit, 115 Fed. Rep. 452.

133. RAILROADS — Farm Crossings. — Under Rev. St. 1899, § 1105, a railroad company, whose track is within a city, is not liable for the expense of a farm crossing constructed by the owner between a tract inside the city and one outside the city.—Smith v. Missouri, K. & T. Ry. Co , Mo., 68 S. W. Rep. 238.

134. RAILROADS — Liabilities not Affected by Consolidation. — Where two railroad companies are consolidated under the law, the consolidating company is not thereby relieved from its liability for a tort previously committed. — Stewart v. Walterboro & W. Ry. Co., S. Car., 41 S. E. Rep. 827.

135. RECEIVERS—Authorizing Completion of Road.—It is an unwarranted exercise of power for a court to authorize its receiver to complete an unfinished railroad, and issue certificates, to be a first lien, without giving existing lienholders an opportunity to be heard. —Bibber-White Co. v. White River Val. Electric R. Co , U. S. C. C. of App., Second Circuit, 115 Fed. Rep. 786.

136. RECEIVERS — Power to Bind Estate. — Receivers for a railroad company cannot legally obligate themselves as such to pay a liability incurred by the corporation prior to their appointment —Platt v. Philadelphia & R. R. Co., U. S. C. C., E. D. Pa., 115 Fed. Rep. 842.

137. RELIGIOUS SOCIETIES—Trustees.—In an action on a note, a judgment against trustees of a church society in their representative capacity, to be satisfied out of the property of the church society, and authorizing an execution therefor, held not void, as authorizing a special execution against the property of the members who were not parties to the action. — Moore v. Stemmons, Mo., 68 S. W. Rep. 224.

138. REMAINDERS — Adverse Possession — Statutes of limitation, or presumptions, under which possession of real estate will ripen into title by adverse possession, do not commence to run against a remainderman till the death of life tenant.—Hallyburton v. Slagle, N. Car., 41 S. E. Rep. 877.

139. SALES - Acceptance.—Purchasers of machine held entitled to reasonable time to test its efficiency before an acceptance could be found.—Van Pub. Co. v. Westinghouse, Church, Kerr & Co., 76 N. Y. Supp. 340.

140. SALES—Collateral Agreement.—Where, prior to a formal written contract of sale of a machine, the parties had discussed the advantages of the machine, statements of the seller could not be regarded as collateral oral agreements surviving the written contract. — Van Pub. Co. v. Westinghouse, Church, Kerr & Co., 76 N. Y. Supp. 340.

141. SALES — Passing Title.—Title to barge to be constructed by defendants for plaintiff held not to pass, so that plaintiff, not having possession or right of possession, cannot maintain trover on defendants' selling the barge to another. — Yukon River Steamboat Co. v. Gratto, Cal., 69 Pac. Rep. 252.

142. SALES—Warranty.—Where a horse was warranted to be kind and true and of sound wind, the fact that on being taken from the seller's stable to that of the buyer it became so stiff as to be scarcely able to move was not a breach of the warranty. — Johansmeyer v. Kearney, 76 N. Y. Supp. 930.

143. SALVAGE — Value of Salved Cargo. — A sale by an agent of the ship of lumber jettisoned, and subsequently rafted and salved by others, at private sale and

without advertisement, does not fix its value for the purpose of determining the compensation to which the salvors are entitled.—The Thomas L James, U. S. D. C., E. D. N. Car., 115 Fed. Rep 566.

144. SCHOOLS AND SCHOOL DISTRICTS—Free Schools.—Trustees of free graded schools held to have no authority to charge pupils incidental fees. — Young v. Trustees of Fountain Inn Graded School, S. Car., 41 S. E. Rep. 824.

145. SEQUESTRATION—Action for Damages.—Where, in an action for damages for wrongful sequestration, it is alleged that plaintiff was injured in his good name, it is not necessary for him also to allege that he had a good name.—Wheat v. Ball, Tex., 68 S. W. Rep. 181.

146. SHIPPING—Contract of Affreightment.—The involuntary abandonment of a vessel by her master and crew under stress of weather, without any actual intention to renounce the contract of affreightment between the ship and cargo owners, does not terminate such contract.—The Eliza Lines, U. S. C. C. of App., First Circuit, 114 Fed. Rep. 307.

147. SHIPPING—Privilege of Designating Deck.—Under the custom of Atlantic ports, in the absence of provision in the bill of lading, the consignee has the privilege of designating the place of discharging, subject to the limitation that the vessel shall not thereby be delayed by an arbitrary exercise of such right.—Evans v. Blair, U. S. C. C. of App., First Circuit, 114 Fed. Rep. 616.

148. SPECIFIC PERFORMANCE — Sale of Land.—Specific performance of oral contract for sale of realty, the purchaser taking possession, making improvements, paying most of the price, and tendering the balance, is in the sound discretion of the court. — Menger v. Schulz, Wash., 68 Pac. Rep. 875.

149. STATUTES—Proof of Enactment.—The official copy of an act of the legislature, on file in the office of the secretary of state, is conclusive proof of its enactment and contents.—Mason v. Cranbury Tp., N. J., 52 Atl. Rep. 568.

150. STATUTES — Sale of Infants' Land. — Where the legislature confers power on persons to sell and convey the land of certain minors "for cash or on credit," a conveyance in exchange for personal property is void. —Garth v. Arnold, U. S. C. C. of App., Eighth Circuit, 115 Fed. Rep. 468.

151. STREET RAILROADS — Powers of City Council. —A grant by a city council to a company of the right to build and operate railroads on any or all streets of the city as it may from time to time elect, even if valid, is merely an offer which may be withdrawn as to any particular street at any time before it has been accepted and acted upon as to such street. — Logansport Ry. Co. v. City of Logansport, U. S. C. C., D. Ind., 114 Fed. Rep. 688.

152. SUBROGATION—Lien for Purchase Money.—Where a purchaser of land finds it liable to lien for purchase money due by his grantor, and pays off the lien, he is entitled to be subrogated to the rights of the holder thereof.—Fulkerson v. Taylor, Va., 41 S. E. Rep. 863.

153. TAXATION—Tax Sale.—The failure of a tax collector in his deed to recite proper facts does not render the tax sale to which it refers an absolute nullity.—Jopling v. Chachere, La., 32 South. Rep. 243.

154. TRADE-MARKS AND TRADE-NAMES—Transfer of Right to Use.—The formation of a partnership by the owner of a trade-mark for the manufacture of the article designated does not pass title to the trade-mark to the partnership, except by express agreement.—Greacen v. Bell, U. S. C. C., D. N. Y., 115 Fed. Rep. 553.

155. TRESPASS—Admissibility of Evidence.—In trespass to try title, it was improper to admit a deed, offered to show common source of title, when plaintiff failed to connect defendant's title with the deed.—Boston v. McMenamy, Tex., 68 S. W. Rep. 201.

156. TRESPASS—Exemplary Damages.—Where, in trespass, defendant knew plaintiff claimed the land trespassed on, and there was evidence tending to show wantonness, exemplary damages were warranted.—Gilman v. Brown, Wis., 91 N. W. Rep. 227.

157. TRESPASS—Pleading.—A defendant, pleading not guilty in trespass *quare clausum fregit*, may show title and right to immediate possession as a defense.—Borough of New Windsor v. Stocksdale, Md., 52 Atl. Rep. 596.

158. TRUSTS—Trustees' Liability for Torts. — Persons taking control of real property under a trust in a will may be sued in tort as individuals for injuries resulting from their negligence in the management of the property.—O'Malley v. Gerth, N. J., 52 Atl. Rep. 563.

159. WAR—Naval Prize and Bounty.—Republication of monition ordered in a suit for the adjudication of a naval prize and the claims of the captors for bounty, where it appeared necessary to bring notice to all those interested.—The Sancto Domingo, U. S. D. C., E. D. N. Y., 115 Fed. Rep 446.

160. WATERS AND WATER COURSES—Riparian Owners. —Though a city draws its water supply from a lake as riparian owner, the act of an upper riparian owner in using the water for bathing purposes is not unlawful.—People v. Hulbert, Mich., 91 N. W. Rep. 211.

161. WHARVES—Oysterfloat Subject to Wharfage.—A float used as a receptacle for oysters unloaded from other boats, which has the form of a boat and is navigable, is subject to a charge for wharfage.—Braisted v. Denton, U. S. D. C., E. D. N. Y., 115 Fed. Rep. 428.

162. WILLS—Contest.—The facts that some of the parties to a contract between heirs not to contest a will were infants would not relieve the adults, if they knew of such infancy.—Reichard v. Izer, Md., 52 Atl. Rep. 592.

163. WITNESSES— Explanation.—It is not error to allow a witness to explain what he meant by a remark he testified he had made.—Phillips v. Wilmington & W. R. Co., N. Car., 41 S E. Rep 805.

164. WITNESSES — Immunity. — Act Cong. Feb. 11, 1893, granting immunity to witnesses testifying before the interstate commerce commission, applies to the witness personally. — *In re* Pooling Freights, U. S. D. C., W. D. Tenn., 115 Fed. Rep. 588.

165. WITNESSES — Interested Party.—Code, § 4604, prohibiting an interested party, or person deriving any interest from a deceased person, from testifying to a personal transaction with a deceased person, as against his administrator, etc., does not prohibit such testimony on behalf of the administrator. — Frick v. Kabaker, Iowa, 90 N. W. Rep. 498.

166. WITNESSES—Memoranda for Refreshing Memory. —Testimony, in giving which witnesses uses memoranda to refresh his memory, will not be suppressed because he refuses to let opposing counsel see the memoranda.—Parks v. Biebel, Colo., 69 Pac. Rep. 273.

167. WITNESSES— Privileged Communications. — The successor of an assignee for creditors may not waive the privilege of his predecessor as to secrecy in regard to communications made by the latter to his attorney while assignee, and as such. — Herman v. Schlesinger, Wis., 90 N. W. Rep. 460.

168. WITNESSES — Proof of General Good Reputation. — The fact that the testimony of a witness is contradicted by that of the other witnesses does not render admissible proof of his general good reputation for truth and veracity. — Louisville & N. R. Co. v. McClish, U. S. C. C. of App., Sixth Circuit, 115 Fed. Rep. 268.

169. WORK AND LABOR— Partial Performance.—Where plaintiffs agreed to put in a heating plant, and abandoned the work without cause, they could not recover on a *quantum meruit* for the value of the work done and materials furnished. — Riddell v. Peck-Williamson Heating & Ventilating Co., Mont., 69 Pac. Rep. 241.

170. WORK AND LABOR — Real Estate Broker. — The question whether a real estate broker was to receive an agreed compensation held immaterial, in an action by him on a *quantum meruit* for the reasonable value of his services. — Williams v. Bishop, Colo., 68 Pac. Rep. 1063.